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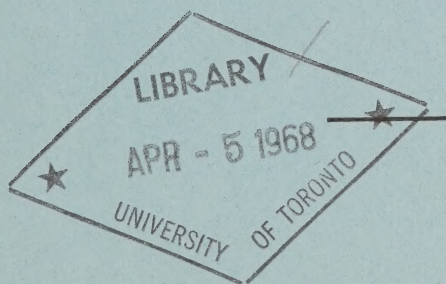


ONTARIO

ONTARIO LAW REFORM COMMISSION

ANNUAL REPORT

1967



DEPARTMENT OF THE ATTORNEY GENERAL



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The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act, 1964*, for the purpose of promoting the reform of the law and legal institutions. The Commissioners are:

H. ALLAN LEAL, Q.C., LL.M., LL.D., *Chairman*

HONOURABLE JAMES C. McRUER, LL.D.

HONOURABLE RICHARD A. BELL, P.C., Q.C.

W. GIBSON GRAY, Q.C.

WILLIAM R. POOLE, Q.C.

Dr. Richard Gosse, Q.C., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are at Room 470, Parliament Buildings, Toronto, Ontario, Canada.

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ONTARIO LAW REFORM COMMISSION

PARLIAMENT BUILDINGS
TORONTO 2

TO THE HONOURABLE A. A. WISHART, Q.C.,

*Minister of Justice and
Attorney General for Ontario.*

ANNUAL REPORT

1967

Dear Mr. Attorney:

We have the honour to present the first Annual Report of the Ontario Law Reform Commission for the year ending December 31, 1967.

INTRODUCTION

1. The Royal Assent was given to *The Ontario Law Reform Commission Act, 1964* on May 8, 1964. The Honourable James C. McRuer was appointed a member and the first Chairman of the Commission by order-in-council dated June 25, 1964. The remaining four members of the Commission were appointed by subsequent orders-in-council and the first meeting of the Commission was held on November 18, 1964.

2. The provisions of section 2 (3) of *The Ontario Law Reform Commission Act, 1964* require the Commission to report from time to time to the Attorney General. Since its inception it has been the practice of the Commission to report to the Attorney General on individual projects in its programme as and when the research work on these projects has been completed and recommendations formulated for remedial legislation. In addition, the Commission has submitted annual statements to the Minister of its activities during each year of its operation for the purpose of departmental estimates but no formal annual reports have been submitted.

3. The Commission believes that it is now desirable that a comprehensive report on its organization, programme and activities be published for general circulation. In these circumstances, this first Annual Report will deal with the activities of the Commission for the period from November, 1964 to December 31, 1967.

FUNCTIONS

4. In the terms of the founding statute, the function of the Commission is to inquire into and consider any matter relating to:

- (a) reform of the law having regard to the statute law, the common law and judicial decisions;
- (b) the administration of justice;
- (c) judicial or quasi-judicial procedures under any Act; or
- (d) any subject referred to it by the Attorney General.

5. Although the primary concern of the Commission is with laws in relation to matters coming within provincial legislative competence, the Commission, however, is not precluded from studying and reporting on matters of federal jurisdiction upon which provincial submissions to the federal administration are offered or invited.

ORGANIZATION

6. The Commission is comprised of a Chairman and four members. The Commission also has a full-time counsel, research assistant, secretary and their supporting staff.

7. Suggested topics for its programme are brought before a meeting of the full Commission for consideration and, if accepted, are allotted to a member of the Commission or its staff for the purpose of having the necessary research done, or are allotted to specialists retained by the Commission. For large projects the practice is to appoint a director who then recruits his research and administrative staff, subject to the approval of the Commission.

8. By choice, the Commission relies heavily for research personnel on the full-time staff of the five Ontario law schools. Their work has been of inestimable help to the Commission. Parenthetically, some elaboration of the relations of the Commission with the provincial law schools and their staff is desirable. The past twenty years have witnessed a remarkable change in the function of the Canadian law schools generally. At one time they were regarded principally as teaching institutions and not as legal science research centres. Starved of personnel and legal research library facilities, they were neither able nor, indeed, expected to engage in law reform research projects.

9. Professional law teachers are and always have been of the stuff that is required for law reform. As has been stated by a member of the New South Wales Law Reform Commission, even in a teaching-oriented environment "it is essential for vitality and reality in teaching that the teacher should not only be fully aware of what is happening in the legal world, and what demands are being made by clients upon the law, but also that he should be engaging in a critical examination of the law which he teaches, both from the 'book' point of view and to determine whether it properly satisfies community demands". The compelling desire to make value judgments which is so much the hall-mark of the good law teacher is the essential attribute of law reform research personnel.

10. The substantial increase in the number of full-time law teachers in Canada has provided an opportunity for specialization hitherto impossible. The availability of specialists in the law schools is one reason why the Ontario Commission has relied so heavily on law school personnel for its research projects. It would have been wasteful, had it been possible, to duplicate this staff of research personnel in the central office of the Commission. The law schools will be strengthened by this process, law teaching will inevitably gain, and the government will not be faced with an increasing establishment within the public service.

11. Adequate legal research libraries simply do not exist in this country apart from those of the law schools and that of the Supreme Court of Canada, with respect to material of the type to be found in legal periodicals and with comparative law material generally. The existence of these materials in the law schools and a familiarity with their use are compelling factors for the employment of law school personnel wherever available. Because of the merits of the law schools it is, perhaps, redundant to add that their potential should be strengthened and nourished in every possible way.

12. The role of the legal practitioner in law reform is less direct but equally indispensable. Legal practitioners, not only at the bar but at all levels of the bench as well, are busy people. It is a common experience that in a growing country with a dynamic economy well-qualified lawyers are in short supply. The heavy obligation which they must discharge in serving the direct needs of the public leaves little or no time for contemplative and painstaking research. There are exceptions, of course, and commendably those with a penchant for law reform are usually found in the ranks of the younger practitioners. The participation of the legal practitioner at all levels in a consultative and advisory capacity, however, is vital to the work of the Commission, and we have just cause to be grateful for the generous and helpful co-operation that we have received. We would hope that their direct involvement in research projects would also continue and grow.

13. Once the research study in any given project is completed, the matter is placed on the agenda for discussion by the Commission sitting as a committee of the whole. To these discussions we invite the authors of the report on the particular study under review and such other resource

personnel as are available and necessary. As indicated above, the Commission's decisions are then embodied in a report to the Attorney General, and frequently but not invariably with a draft bill annexed, suggesting the form of legislation which will implement the recommendations of the report.

THE PROGRAMME: GENERAL OBSERVATIONS

14. The Commission may embark upon projects, either on its own motion or as a result of a reference by the Attorney General. Although, unlike the procedure pertaining to the English Law Commission, the programme of the Commission does not require prior legislative approval, the Commission recognizes that its relations with the administration and legislature should be such as to ensure a serious concern for its work and a reasonably expectation of the acceptance of the product of its work.

15. The programme of the Commission is a continuing one in the sense that projects for study are added from time to time, carried through to the stage of final report and finally removed from the agenda. These individual projects are infinitely various in their complexity and the time required for their completion.

I — THE PROGRAMME: REFERRED MATTERS

16. Section 2 (1) (d) of the Act provides that it is the function of the Commission to inquire into and consider any matter relating to any subject referred to it by the Attorney General. Some of the most challenging tasks that the Commission has undertaken have come to us by way of such reference.

(i) *Personal Property Security Legislation*

17. In November, 1964, the Commission was requested by the Attorney General to consider and report on a draft bill designed to reform and make uniform the law regarding security interests in personal property and fixtures. The draft bill was concerned principally with the field of commercial transactions covered in Ontario by *The Assignment of Book Debts Act*, *The Bills of Sale and Chattel Mortgages Act*, *The Conditional Sales Act* and *The Corporation Securities Registration Act*. The bill was originally developed by a committee under the chairmanship of F. M. Catzman, Esq., Q.C., and generally based on Article 9 of the United States Commercial Code prepared by the American Law Institute. The bill also envisaged the establishment of a province-wide central registration system for the registration of security agreements affecting personal chattels.

18. After six months' intensive study and research conducted by the Commission sitting as a committee of the whole, its report with a revised draft bill annexed was submitted to the Attorney General on May 28, 1965. The bill was not introduced in the legislature but in accordance with the policy of the Commission was given wide circulation, together with the report of the Commission, for the purpose of discussion

and study. The Commission considered all the representations submitted and reported with a further revised draft bill on May 18, 1966. The bill was introduced and given first reading at the 1966 session of the legislature and again circulated for comment.

19. The final draft of the bill, along with supplementary bills dealing with the substituted enactments, was introduced and enacted in the 1967 session of the legislature. The full range of the legislation is comprised as follows:

The Personal Property Security Act, 1967;

The Sale of Goods Amendment Act, 1967;

The Bills of Sale Act, 1967;

The Conditional Sales Amendment and Repeal Act, 1967;

The Bills of Sale and Chattel Mortgages Amendment and Repeal Act, 1967;

The Assignment of Book Debts Amendment and Repeal Act, 1967.

Although the benefits of this comprehensive legislation will not be felt until the whole scheme becomes fully operational, the Commission feels that this is a major and imaginative project of law reform.

(ii) *The Wages Act: Assignment of Wages*

20. By reference dated February 23, 1965, the Commission was asked to consider and report on proposed Bill No. 108, 1964, aimed at alleviating certain unsatisfactory, if not unconscionable, practices with respect to wage assignments. The Commission gave priority to the project and reported on March 3, 1965 with recommendations for remedial legislation.

(iii) *The Execution Act: Exemption of Goods from Seizure*

21. By Reference dated April 26, 1965, the Commission was asked to consider and report on the subject of exemption of certain goods from seizure under *The Execution Act*, R.S.O. 1960, c. 126, and a summary procedure by which disputes involving exemption privileges should be determined. The law of exemptions, though very old, is unchanged in its fundamental philosophy that a debtor, like any other person, is not to be deprived of the basic necessities of life, such as food, clothing and accommodation, or the essential tools or equipment necessary for him to carry on his business, profession or calling. During its long legislative history, the Ontario enactment had become overlaid with anachronisms and unrelated provisions. With the helpful assistance of working papers prepared by Professor D. H. Bonham, Faculty of Law, Queen's University, and Mr. Maurice J. Coombs, research assistant to the Commission, the Commission studied the rationalization and updating of these

provisions and on December 9, 1966 reported recommending remedial legislation. These recommendations were implemented by *The Execution Amendment Act, 1967*, which came into force on July 1, 1967.

(iv) *The Evidence Act: Admissibility of Business Records*

22. By reference dated January 17, 1966, the attention of the Commission was directed to the Report dated February, 1965, made by a committee appointed by the Attorney General and composed of the Honourable J. C. McRuer and W. B. Common, Esq., Q.C., in which certain recommendations were made with respect to the amendment of the law and rules of procedure governing the presentation of medical evidence in court. The Report went further, however, and recommended that:

“*The Ontario Evidence Act* should be amended to provide for the admission in evidence of all records made in the ordinary course of business . . . ”

The Commission was asked to consider this broader aspect of the question, having in mind the substantial advances in business record keeping, particularly those involving electronic devices such as computers. The desideratum was a provision for the admissibility of records kept in the ordinary course of business without calling the person who made the record or controlled the machine that made the record.

23. After having made a careful analysis of similar legislation in other jurisdictions, and having considered means by which such existing legislation could be improved, the Commission, on February 16, 1966, recommended remedial legislation and incorporated a draft bill in its report. These recommendations were implemented by section 1 of *The Evidence Amendment Act, 1966* which came into force on July 8, 1966.

(v) *Basis for Compensation on Expropriation*

24. By reference dated March 8, 1966, the Commission was asked to consider and report on the basis for compensation under *The Expropriation Procedures Act, 1962-63*. This investigation was thus limited to a study of the basis for assessing compensation and touched on matters of procedure on expropriation only to the extent that they directly affect the amount of compensation payable. The broader aspects of procedure are at present being considered by the Royal Commission on Civil Rights and will be dealt in its report.

25. The Commission retained Professor Michael M. Dennis, of the Osgoode Hall Law School, to do a comparative study of provincial and federal legislation of Canada and that of other jurisdictions of the British Commonwealth and the United States. In addition to his main study, Professor Dennis conducted a survey of the relocation problems encountered and the compensation paid to the owners of property in the expropriation for urban redevelopment in Metropolitan Toronto.

26. Aware of the widespread and serious concern for the social implications of these problems, the Commission invited and received written briefs from many public and private institutions, as well as from private individuals. Public hearings were announced and held in Toronto in September, 1966. The debt which the Commission owes for the most helpful information contained in these oral and written submissions is readily acknowledged and its gratitude extended.

27. The Commission gave these matters anxious consideration not least because of the novelty and complexity of the problems raised by recent urban renewal developments and the need for relocation assistance, and reported on September 21, 1967. The report of the Commission recommended substantial amendments to the present legislative basis for assessing compensation and proposed the enactment of a comprehensive code stipulating the relevant factors to be considered in fixing such compensation.

II — THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

28. Earlier in this report, it has been pointed out that the Commission, by virtue of the provisions of section 2 of *The Ontario Law Reform Commission Act, 1964*, is empowered to initiate study projects of its own motion and may institute and direct legal research for the purpose of carrying out its functions. This jurisdiction is obviously important in the reform of the socio-legal structure of our society, but it is also vital in areas of so-called "lawyers' law".

29. This body of material is not devoid of social significance but is frequently of a highly technical nature and tends to be regarded as the preserve of the more specialized members of the practising legal profession and others administering the law. Improvements and amendments in these rules, systems and institutions is normally regarded as requiring nothing more than imparting a further gloss on the existing fabric. What is sometimes needed is a substantial change in the basic structure.

30. It is generally admitted that there is little time and inclination in the busy legislative processes for this type of reform and for many reasons little attempt on the part of the legal profession is made to initiate it. It is essential, therefore, that an independent law reform agency should adopt it as a matter of its legitimate and continuing concern.

(a) — COMPLETED PROJECTS

(i) *The Perpetuities Act, 1966*

31. The study leading to the reform of perpetuities law was the first project undertaken by the Commission, under the research direction of the late Dr. C. A. Wright, Q.C., LL.D., former Dean of the Faculty of Law, University of Toronto, one whose pre-eminence in the field is widely and gratefully acknowledged.

32. For a long time the body of common law, compendiously referred to as the Rule Against Perpetuities, had attracted substantial and growing criticism. The rule had ceased to be the sole province of the draftsman of the family settlement involving questions of property distribution. Like a malignant cell, it had spread into the area of contract, in its application to options; into the area of common law conveyancing with respect to easements, rights of entry and possibilities of reverter; into the matter of the duration of trusts for non-charitable purposes; and even into the exercise of administrative powers, all in a manner that would have horrified its original proponents.

33. The first project report of the Commission dated February 1, 1965 to the Attorney General dealt with the unsatisfactory operation of the rule and made recommendations for the enactment of broad remedial legislation modifying the rule and amendment of associated statutes. Bills embodying these recommendations were introduced into the legislature by the Attorney General and given first reading on April 8, 1965. No final legislative action was contemplated until an opportunity for full consideration had been given and to this end the bills were printed, given wide circulation and comment thereon invited.

34. The matter was referred back to the Commission and, after having considered all representations, the Commission made a supplementary report on March 1, 1966, and recommended certain changes in the original proposals. Bills incorporating these changes were again introduced and given final legislative enactment. The Acts which came into force on September 6, 1966 were as follows:

The Perpetuities Act, 1966;

The Accumulations Amendment Act, 1966;

The Trustee Amendment Act, 1966;

The Conveyancing and Law of Property Amendment Act, 1966.

35. So far as the Commission is aware, there are no cases in which this new legislation has been subject to judicial interpretation but it has been referred to in two recent Ontario decisions.

36. The Commission is encouraged to note that the Conference of Commissioners on the Uniformity of Legislation in Canada, at its meeting in September, 1967, approved, subject to one or two minor amendments, the Ontario legislation as a model Act to be recommended for adoption by the other provinces in Canada.

37. In addition, the Commission has had correspondence and inquiries from those drafting similar legislation for the State of Victoria, Australia.

38. The Chairman of the Ontario Law Reform Commission has been invited to be an associate member of the Committee on Rules Against Perpetuities of the Section of Real Property, Probate and Trust Law of the American Bar Association. This Committee has been formed to

aid in the reform of the Rule Against Perpetuities and it is felt that membership on this Committee will provide us with accurate and up-to-date information on the experience with similar legislation throughout the common law world.

(ii) *The Condominium Act*

39. The Commission initiated a research study of the law of condominium in December, 1965 and engaged Professor R. C. B. Risk, Faculty of Law, University of Toronto, to do a comparative study of existing legislation in the Canadian provinces and other jurisdictions of the British Commonwealth and the United States. The Commission wishes to record its gratitude to Professor Risk for his scholarly and most valuable assistance in all phases of the project.

40. There was a demand for condominium legislation in Ontario. The major reasons are probably the high cost of improved land in urban areas and the appeal of ownership which has been pronounced in the social mores of this province dating back to pioneer days. Condominium provides the amenities of apartment living on a shared-cost basis, with the advantages of home ownership. As contrasted with co-operative developments, this type of ownership provides lower risks and greater flexibility in financing. Lower risks result from the fact that each unit in a condominium is separately taxed and individually financed, and accordingly no unit owner is liable on the default of another. Again, because each unit is a separate property interest, greater flexibility is achieved in that each owner is able to vary the financing to suit his needs and desires.

41. Enabling legislation for condominium was necessary because the existing common law and legislation presented formidable difficulties. They include the following:

- (i) the general prohibition of positive covenants running with the land makes the imposition of obligations on subsequent purchasers awkward or impossible;
- (ii) the rules of future interests limit and complicate provisions for the eventual termination of the interests of the owners;
- (iii) the attitude of the common law towards the ownership of space and subdivision of space may not be entirely clear;
- (iv) descriptions of cubes of space are more easily imagined than prepared;
- (v) municipal taxes would probably be assessed against the property owned in common as one parcel, impairing the advantage of financial independence that might be expected to accompany ownership;
- (vi) mechanics' liens against the property owned in common would have the same effect; and

- (vii) the express provisions of provincial planning restrictions on the subdivision of land would probably apply, even though the spirit might not.

42. The Commission was convinced that enabling legislation would avoid the difficulties raised by the existing law, and, perhaps more importantly, could provide a relatively simple and comprehensive framework for development.

43. The Report of the Commission, with a proposed bill illustrating the form which the legislation might take, was submitted to the Attorney General on March 6, 1967. Legislation implementing the recommendations of the Commission was enacted in the 1967 session of the Ontario legislature and *The Condominium Act, 1967* was proclaimed in force effective September 1, 1967.

44. It was announced on October 13, 1967 that an Ontario Housing Corporation multi-million dollar residential scheme involving 3,500 housing units in the Chapel Glen Village development in suburban Toronto would utilize the condominium concept of home ownership.

45. On December 28, 1967 it was announced that the first condominium development in Ontario under *The Condominium Act, 1967* has been registered in the Brampton registry office on December 27, 1967 by a private developer. This condominium, of town-house design, includes 37 three- and four-bedroom two-storey units in seven separate buildings. It was stated that the units will be individually owned and mortgaged, with selling prices ranging from \$15,960 for a three-bedroom unit of 1,322 sq. ft. area to \$18,260 for a four-bedroom unit with 1,560 sq. ft. with the most popular model having three bedrooms selling for \$16,595 and having 1,363 sq. ft. These prices are substantially lower than those pertaining in this area for single-family detached units with comparable accommodation.

(iii) *The Mechanics' Lien Act*

46. Mechanics' lien legislation has existed in the Province of Ontario for almost 100 years. During this period the Province has evolved from an essentially rural and agricultural community to a complex and commercial society. Although attacks have been directed from time to time against the basic principles of this type of legislation, there is no consensus, so far as the Commission has been made aware, of the desirability of its repeal. There has been, however, a growing dissatisfaction with important matters of detail and, as a result of representations made to it and the Attorney General, the Commission in 1965 undertook an intensive study of the Ontario *Mechanics' Lien Act* against a background of similar legislation in other jurisdictions including any judicial and extra-judicial writing on the subject. In addition, the Commission invited the Bar and the judiciary, together with many organizations that would likely be interested in amendments to the Act, to make representations. Many submissions were received from a representative group of interested parties.

47. After having considered all submissions, the Commission on February 25, 1966 made an initial report to the Attorney General with its recommendations, together with the text of a draft bill incorporating the recommendations contained in the Commission's report.

48. A bill implementing these proposals, incorporating additional amendments originating with the Department of the Attorney General and otherwise re-enacting *The Mechanics' Lien Act* was introduced in the legislature and given first reading on June 27, 1966.

49. A substantial number of representations with respect to the report and proposed bill was received and considered by the Commission at the request of the Attorney General. A public hearing was also conducted by the Commission on January 4, 1967 to give an opportunity to a representative group of persons to make oral submissions on the proposed legislative changes. This group included general contractors, labour representatives, suppliers, and members of the legal profession specializing in this area of the law.

50. The Commission reviewed its initial report and the proposed legislation in the light of these helpful submissions and made its final report to the Attorney General on May 26, 1967, recommending additional changes in some aspects of the legislation and confirming its views on others dealt with in its initial report in 1966.

51. Throughout its deliberations on this important topic the Commission was generously aided by a large number of people, whose names appear in the two reports. The Commission would like to record again the debt it owes to His Honour, Judge Ian MacRae, the late Senior County Court Judge of the County of Middlesex, and to Douglas N. Macklem, Esq., Q.C., of the Ontario Bar.

52. The Commission is mindful of the wide divergence of views entertained by the various group interests with respect to this particular legislation. Not all these views were reconcilable. The Commission is satisfied, however, that if the recommendations contained in its report are implemented by legislation, it will have gone as far as one can go in accommodating the various interests without destroying or distorting the basic principles of the Act. Anything further would probably require repeal of the legislation and a denial of this particular protection to all groups.

(b) — PROJECTS IN PROCESS

(i) *Family Law*

53. The Commission initiated a research project on family law in the spring of 1965. The function of the project was to analyse the existing law affecting all areas of family relations within the legislative competence of the Provincial Legislature, to evaluate the adequacy of those laws in view of changed economic and social conditions pertaining to the family, to state the basic principles required for a modern Ontario code of family law and to recommend remedial legislation.

54. The research team under the direction of Professor I. F. G. Baxter, of the Faculty of Law, University of Toronto, has now submitted to the Commission its study and proposals on property subjects. This part of the project deals with such matters as:

- (i) the nature of support obligations involving husband and wife, parent and child;
- (ii) the rights of husband and wife with respect to the matrimonial home;
- (iii) dower;
- (iv) curtesy;
- (v) the division of matrimonial property on dissolution of the marriage by divorce or death, and the principle of the balancing claim;
- (vi) married women's property rights during the subsistence of the marriage;
- (vii) the disposition of property by will;
- (viii) the distribution of the property where a spouse dies without leaving a will; and
- (ix) a revised summary procedure for the administration of small estates.

55. Since the part of the project dealing with property subjects is largely self-contained, the Commission plans to release the study early in the new year and to invite comment from all interested parties. The proposals by the research team are imaginative and provocative and will be the subject of a full day's discussion by the members of the legal profession at the Annual Mid-Winter Meeting of the Ontario Branch of the Canadian Bar Association in Toronto on Friday, February 2, 1968.

56. The Commission wishes to make it clear that the proposals contained in the Study on Property Subjects do not necessarily represent the views of the Commission. After appropriate study of these proposals, the Commission's views and recommendations will be contained in its own report to the Attorney General in due course.

57. In addition to Professor Baxter, the research team engaged on the part of the project dealing with property subjects included Dean Thomas G. Feeney, Q.C., Common Law Section, Faculty of Law, University of Ottawa; Mrs. Violet W. Bielski, of the Ontario Bar; and Messrs. Mohan Prabhu and Paul Reed, research assistants. In this aspect of the project the research team had the generous assistance of a consultative committee composed of Messrs. M. A. Catzman, Jr. and G. W. Collins-Williams, Q.C., of the Ontario Bar; Mrs. A. R. Dubin, Q.C., of the Ontario Bar; the Honourable Neil C. Fraser, Judge of the

High Court of Justice for Ontario (who resigned from the Committee on December 29, 1966); Mr. John M. Hodgson, Q.C., of the Ontario Bar; and the Honourable Bora Laskin, Justice of the Court of Appeal for Ontario.

58. Work continues on the remaining subjects of the project and it is anticipated that the entire study by the research team will be completed in 1968. These additional subjects will deal with the enforcement of support obligations; the law relating to the celebration of marriage (including the age of free marriage); separation and marriage breakdown; incidence of divorce and annulment; interspousal torts; the law relating to children; conflict of laws; and the structure of a tribunal best suited to deal with matrimonial causes and family law generally.

59. The research team was augmented for this phase of the project by the addition of Professor E. R. Alexander, Faculty of Law, University of Toronto; Professor D. Mendes da Costa, Osgoode Hall Law School; Professor Julien D. Payne, Faculty of Law, University of Western Ontario; Mrs. Anna Stevenson, of the Ontario Bar; Dr. Olive Stone, Department of Law, London School of Economics and Political Science, University of London; and Professor John Swan, Faculty of Law, University of Toronto.

60. Recognition is also given to the most valuable consultative services rendered by Professor Louis M. Baudouin, Faculty of Law, McGill University; Professor Monrad G. Paulsen, Columbia University School of Law; Professor Max Rheinstein, University of Chicago Law School; Professor Frank E. A. Sander, Law School of Harvard University; and Professor John W. Willis, Faculty of Law, University of Toronto.

(ii) *Limitation of Actions*

61. A comprehensive research project involving the law on limitation of actions was initiated by the Commission in 1965. Much of the law on this subject in this jurisdiction is very old, and *The Limitations Act*, R.S.O. 1960, c. 214, is based essentially on an English statute passed in the early part of the seventeenth century. It is clear from the recent decision of the Ontario Court of Appeal in *Schwebel v. Telekes*, [1967] 1 O.R. 541, and referred to us by Laskin, J.A., while yet unreported, that the archaic language of our legislation concerning limitations continues to impede the Court in administering justice in this important field of the law and that reform is desirable.

62. Added to the archaisms in the main statute is the fact that limitation provisions are to be found in a host of statutes such as *The Highway Traffic Act* and the statutes governing the professions. Unhappily, these specific provisions have been engrafted on the law without any attempt at uniformity of substance or language even where circumstances render uniformity of treatment desirable and, indeed, vital.

63. The Commission's task, therefore, has been to conduct its study not only with a view to updating the language of legislative enactments and reforming basic principles to accord with present-day philosophy and conditions but also, as far as possible, to integrate the various limitations provisions into an all-embracing code.

64. The Commission has been assisted substantially in its endeavours by a wealth of comparative materials in the form of recent reports and legislative enactments in other jurisdictions. To mention only some of them, studies have included the Fifth Interim Report (1936) of the English Law Revision Committee; the Limitation Act, 1939 (England and Wales); the Report of the Tucker Committee on the Limitation of Actions (U.K. 1949); the Law Reform (Limitation of Actions, &c.) Act, 1954 (U.K.); the Limitation Act 1963 (U.K.); the English Law Reform Committee's Fourteenth Report (Acquisition of Easements and Profits by Prescription), 1966; the Limitation of Actions Act, being the model act of the Conference of Commissioners on Uniformity of Legislation in Canada, recommended in 1931 for adoption, and amended in 1932 and 1944; the report of Dean Wilbur F. Bowker, Q.C., dated October 30, 1964 to the Alberta Law Reform Committee on Limitation of Actions in Tort; the Resolutions of the Alberta Law Reform Committee dated November 27, 1964; the Alberta Act to amend the Law Respecting Limitation of Actions in Tort, 1966; the proceedings of the Manitoba Law Reform Committee in Limitation of Actions (1964-66); the Manitoba Act to amend The Limitation of Actions Act, 1967; the Report of the Law Reform Commission of New South Wales on the Limitation of Actions (October, 1967).

65. The research consultant on this project was John D. Honsberger, Esq., Q.C., of the Ontario Bar, who rendered most valuable assistance to the Commission throughout the study. Mr. Maurice J. Coombs, research assistant to the Commission, and Mr. Douglas K. Gray, a part-time research assistant, contributed greatly by preparing a consolidation of limitation periods in Ontario statutes.

66. The Commission has completed its deliberations and its report to the Attorney General containing its findings and recommendations is now in course of preparation.

(iii) *Law of Property Project*

67. There is general agreement that a thorough review of the law of property, with particular emphasis on the law relating to interests in land, is overdue in this jurisdiction. It seems to be fashionable, though not entirely accurate, to refer to what is needed by reference to the English law of property legislation of 1925. There is no doubt that that legislation and the substantial studies which made it possible were an outstanding achievement in law reform. It would be misleading, however, to assume that that project could simply be duplicated in Ontario.

68. The aims of the 1925 English legislation were: (i) the assimilation of real and personal property; (ii) the simplification of conveyancing; and (iii) the abolition of anachronisms.

69. In Ontario real and personal property have been assimilated, both for purposes of administration and distribution, with the passing of *The Devolution of Estates Act* in 1886. The assimilation of real and personal property for purposes of administration was accomplished in

England by the *Land Transfer Act, 1897*, but the assimilation for distributive purposes had to await the 1925 legislation. The doctrine of primogeniture was abolished in Upper Canada in 1852; it was abolished in England in 1925.

70. The simplification of conveyancing in England was attempted in a number of ways, not the least important of which was the establishment of a land registration system. The Ontario land registration system has provided for public registration for over 100 years, but its very age bespeaks its inherent weaknesses. In fact, it may not be to our credit that we have two systems, commonly referred to as "the registry office" and "the land titles" systems. Also, it may not be beyond the realm of possibility that this area of the law and legal administration would benefit from computerized data recording and retrieval, to say nothing of the advantages that would seem to flow from geodetic survey methods and description by co-ordinates. It seems justifiable to make the necessary effort to bring this aspect of our law and public service into line with the electronic age.

71. The third aim of the English property legislation in 1925 was the abolition of anachronisms. This is a matter of equal concern to us. It may well be necessary to retain the minimum of the underlying and basic feudal concepts of the land law but the time has perhaps come to rid ourselves of the questionable luxury of its excrescential trappings.

72. Many of the anachronisms have not proven burdensome with us in Ontario simply because it has not been customary to make extensive use of the *inter vivos* settlement. The prospect that these outmoded doctrines may be invoked at any time is a source of constant fear and complexity to the legal practitioners and the public they serve.

73. Much of our law of landlord and tenant derives from the *laissez faire* doctrines of the industrial revolution and of even earlier times and may be out of step with modern commercial practices and the social justice in residential accommodation which are demanded for our times.

74. For these and other reasons, the Commission initiated a law of property project divided into ten sections which admit of individual treatment but the desideratum is to bring them together in time as one all-embracing law of property code. The sections of the project are as follows: (i) Condominium; (ii) Matrimonial Property; (iii) Devolution of Estates (Intestate Succession); (iv) Testate Succession; (v) Land Registration; (vi) Landlord and Tenant; (vii) *The Trustee Act* and associated statutes; (viii) Community Planning and Land Use Control; (ix) Conveyancing and Mortgages; and (x) the Basic Principles of Real Property Law.

75. Although nominally part of the law of property project, the section dealing with the law of Condominium was given separate treatment by the Commission and has been dealt with in the earlier part of this report. The two sections on Matrimonial Property and the Devolution of Estates (Intestate Succession) were originally designated as part of the Family Law Project and the bulk of the research and recommendations for reform will be dealt with in the report on that project.

76. The section of the law of property project dealing with testate succession involved primarily the proposed adoption in Ontario of the model Wills Act of the Conference of Commissioners on the Uniformity of Legislation in Canada. The model Act is usually referred to as the Uniform Wills Act and has been adopted with slight modification in six provinces of Canada and the Yukon and Northwest Territories. Consideration of it came before the Commission following a study by the Wills and Trusts Sub-Section of the Ontario Branch of the Canadian Bar Association. A Committee of that Sub-Section under the chairmanship of George W. Edmonds, Esq., Q.C., of Toronto, made a comparative study of the Ontario Wills Act and the Uniform Wills Act and presented its report at the mid-winter meeting of the Ontario Branch in February, 1966. The meeting passed a resolution reading as follows:

“Resolved:

That the report of the Sub-Committee of the Wills and Trusts Sub-Section, recommending the enactment in Ontario of the Uniform Wills Act, prepared by the Commissioners on Uniformity of Legislation in Canada, be accepted and approved subject to certain amendments, and referred by the Ontario Branch of the Canadian Bar Association to the Ontario Law Reform Commission.”

77. The Commission has given intensive study to the report of the Bar Committee, has made a section by section analysis of the provisions of the Uniform Act and has considered recent amendments to the Uniform Act which were not available to the Bar Committee. The final draft of a comprehensive report is now being settled and the Commission will submit its report to the Attorney General in the near future.

78. The Commission wishes to express its gratitude for the assistance and helpful co-operation of the Bar Committee on this important matter. We believe that this joint effort of the Commission and the organized Bar augurs well for the future.

79. Research supervisors have been appointed for four of the remaining five sections of the law of property project and work is proceeding. The appointments are as follows:

- | | |
|--|---|
| (i) Land Registration Section | Professor R. C. B. Risk,
Faculty of Law, University of
Toronto; |
| (ii) Section on the Basic Principles
of Real Property Law | Professor D. Mendes da Costa,
Osgoode Hall Law School; |
| (iii) Section on Landlord and
Tenant | Professor Morley R. Gorsky,
Faculty of Law, Queen's
University; |

- | | |
|--|---|
| (iv) Section on <i>The Trustee Act</i> and associated statutes | Professor Ralph E. Scane,
Faculty of Law, University of
Toronto; |
| (v) Section on Community Planning and Land Use Control | Professor J. B. Milner,
M.T.P.I.C.,
Faculty of Law, University of
Toronto. |

Some elaboration on the scope of this latter study is warranted.

80. Twenty years have passed since Ontario enacted its major planning legislation. In terms of the pace of developments in this area twenty years is a very long time. The Commission plans a reassessment of our legislation in the field of subdivision control, zoning by-laws, community official plans, urban renewal, low rental housing development, slum clearance, etc. In an ambitious and detailed attempt at fact finding with respect to planning practices and procedures, Professor J. B. Milner, the Commission research supervisor, in July, 1967, circulated questionnaires for completion by members and clerks of municipal councils, planning directors, members and secretaries of local planning boards. This was followed in November, 1967 by the wide distribution of a working paper prepared by Professor Milner and called "Tentative Proposals for the Reform of Ontario Law Relating to Community Planning and Land Use Control". This comment contained the text and commentary on forty-one proposals advanced by the research director and comment thereon was invited. The demand for copies of this working paper and the comments already received have been most encouraging.

81. Research and consideration of the final section of the property project on Conveyancing and Mortgages have been deferred pending the substantial completion of the other sections.

(iv) *Motor Vehicle Accident Compensation*

82. The subject of compensation for personal injuries arising out of automobile accidents is a matter which is probably on the agenda of law reform commissions the world over unless it happens to be the subject of a Royal Commission inquiry as it is at the present time in the Province of British Columbia. The Ontario Law Reform Commission has such a project on its programme and has appointed as its director Professor J. Bruce Dunlop, Faculty of Law, University of Toronto.

83. The problems in this area are numerous and highly complex involving:

- (i) the recent clash of judicial opinion on the award of damages for loss of amenities of life in the "sleeping beauty" cases;
- (ii) the question of imposing liability regardless of fault;

- (iii) the "second look" doctrine and the review of damage awards;
- (iv) the feasibility of substituting annuity for capital payments;
- (v) over-compensation where hospital, medical and liability insurance coincide;
- (vi) whether the whole scheme of private reimbursement should be replaced by a comprehensive insurance scheme to cover every citizen and all accidents as has been recommended by a Royal Commission report in New Zealand;
- (vii) the vexing problem of choosing a procedure and forum in or out of the mainstream of the judicial process; and
- (viii) the possible effect of some or all of these reforms on achieving accident reduction and avoidance of injury by making the motoring public more alive to the mechanics of accidents arising out of the use of vehicles and shifting our orientation from preoccupation with fault to accident avoidance.

84. Since the director of this project was not appointed until June, 1967, the Commission is not yet in a position to signify the date for its report.

(v) *The Law of Evidence*

85. The Commission has initiated a research project respecting the law of evidence with Dr. Alan W. Mewett, Osgoode Hall Law School, as director of the project. The law of evidence, unlike most other areas of the law, does not fit neatly into the classification of federal and provincial jurisdictions. It is not possible to state that certain defined areas are within the provincial and certain other areas are within the federal jurisdiction. On the contrary, most of the rules of evidence are equally applicable to both provincial and federal actions. However, the law of evidence being adjectival in nature, federal evidentiary rules apply to proceedings over which the federal government has jurisdiction, while the provincial rules of evidence apply to proceedings over which the provinces have jurisdiction.

86. It is possible and beneficial, therefore, to conduct an examination into the rules of evidence limited to provincial jurisdiction and the Commission contemplates this course of action with the hope that at some stage its work would be assisted by and integrated with a comparable or joint project involving the federal government.

87. The scope of the study has been fixed by a tentative designation of the following list of topics for consideration: hearsay evidence in civil actions; documentary evidence and business records; self-serving evidence; husband and wife privilege and marital communications; executive privilege; privilege and the professional witness; self-incrimination; the burden of proof and presumptions; *res ipsa loquitur*; illegally

obtained evidence; confessions and admissions; competence and compellability; previous conduct and previous convictions; oaths, affirmations, and unsworn witnesses; corroboration; the use of notes; character evidence; and judicial notice.

88. Work has been begun already on the topic of hearsay evidence in civil proceedings and the director has assembled the nucleus of an effective research team with the recruitment of Professor B. C. McDonald, Faculty of Law, Queen's University, and Professor R. Graham Murray, Faculty of Law, Dalhousie University. A consultative committee to secure the full participation of the practising Bar will be established.

89. The Commission anticipates that reports on individual topics and phases of the project will be made as and when they are available but that proposals when made will be capable of integration into a comprehensive code covering the entire subject matter when the whole project has been completed.

(vi) *Age of Majority*

90. Although some aspects of the problem concerning the age at which persons acquire legal capacity are on the agenda of the Family Law Project, the Commission decided recently that these matters warranted treatment in a separate project. Since the age of free marriage (i.e. the age at which persons are free to marry without parental consent) has already been dealt with in an extensive working paper on marriage, further research on this particular topic is not necessary. The scope of the project, therefore, has been broadened to consider the desirability of changes in the law relating to contracts made by persons under 21 years of age; to their power to hold and dispose of property; and to the optimum age for termination of maintenance allowances. Through advertisements in a representative group of Ontario daily newspapers and legal publications and by letters, the Commission has invited written submissions by members of the public, merchants and trading establishments, credit granting institutions, social and welfare agencies, university administrations, university student organizations, departments of the Provincial Government and all other interested parties. The response to this invitation has been most encouraging.

91. The task of the Commission in the project has been greatly facilitated by the excellent and comprehensive report of the Latey Committee in the United Kingdom. Much of the doctrinal research done by that Committee is directly relevant to our study. It remains for us to test their recommendations against the sociological and economic conditions prevailing in this jurisdiction. Much of the response that has come to us already exhibits a parallel experience with that found there. It is noteworthy, though perhaps not surprising, that the response we have received from many young people reflects the ferment in this age group which has been manifested recently on a number of issues.

(vii) *Right of Privacy*

92. The Commission has begun preliminary studies to determine the nature of the current and growing problems in the area referred to compendiously as the "right of privacy"; to attempt to lay out the boundaries of those problems which might fall within the legislative competence of the provincial legislature; and to ascertain which, if any, of them might be dealt with within the powers and resources of this Commission.

93. No one in this country could read Professor Alan W. Westin's brilliant and recent analysis of this problem area of American society without harbouring the gnawing suspicion that much of his writing is relevant to Canadian society as well. His book, "Privacy and Freedom", is an effective antidote to complacency. As a nation, we are not nearly as perceptive in our relations with our neighbours as we ought to be, and seem to have acquired a propensity for adopting not only the best in American life but also the worst. There is some evidence in Canada of an awakening to the fact that the use of products of the technological revolution may have side effects which make serious inroads on our civil liberties and human dignity.

94. The evidence is found, *inter alia*, in the Report of the Commission of Inquiry Into Invasion of Privacy in British Columbia by Commissioner R. A. Sargent in August, 1967; in the number of private member's bills on some aspects of this matter introduced into the House of Commons; in the resolution of the Canadian Bar Association to be debated in a plenary session of its Annual Meeting in Vancouver, on September 2, 1968; and in the increasing flow of comments contained in the daily press.

95. It is clear, of course, that this is not an embarrassingly and uniquely North American aberration. It is universal. The first international legal conference to discuss the subject comprehensively was the Nordic Conference on the Right to Privacy held in Stockholm, Sweden, on May 22-23, 1967. This has been followed by growing legislative activity in Europe in this field witnessed by the recent legislation against eavesdropping in Holland and West Germany.

96. The spectrum comprising these problems is very broad and covers areas of civil as well as criminal jurisdiction. Indeed, its prospect reinforces Maitland's aphorism that the "whole of the law is a seamless web". It ranges over the domain of both public and private law to such things as the use or abuse of wire tapping and electronic eavesdropping devices, long range cameras and microphones, etc. in the detection and investigation of crime and national security by police and governmental agencies; the use of the polygraph and breathalyzer by the police; the use of the polygraph, closed circuit television and eavesdropping devices as a means of employee supervision; the use of closed circuit television and eavesdropping devices as aids to sales promotion; the non-clinical use of psychological tests and questionnaires by prospective employers and other institutions; the use of devices in industrial espionage to illegally obtain trade and financial secrets; the use of psychological tests in schools without parental knowledge or consent;

personality surveillance in the accumulation and storage of personal data in computers or otherwise and its improper disclosure to others; the publication of comment made by or about a person, whether defamatory or not, and the right to reply on equal terms; and the establishment of a common law right of action on the disclosure of private facts to the public, usually by the mass media. These are the areas of concern. Whether they are also areas which are capable and deserving of control by legislation is a determination which can only be made after full and careful inquiry. The Commission continues to study them.

(viii) *Other Projects*

97. There are three additional projects in the programme of the Commission for which the necessary research is being conducted internally. Although the scope of the legal inquiry is not broad, the social significance of the policy decisions involved is important and complex. These projects include the trade sale of new houses and the applicability of the doctrine of *caveat emptor*; the expunging of records of conviction for provincial offences; and the admissibility of a certificate of a conviction in a criminal case as evidence in subsequent civil proceedings. The last topic has proved particularly troublesome and although the operation of the rule in *Hollington v. Hewthorn* is far from satisfactory no acceptable solution to the problem has yet been formulated.

98. A further project of the Commission involves a study of the law pertaining to innocent misrepresentation in the law of contract. Professor D. A. Soberman, associate dean, Faculty of Law, Queen's University, has been appointed to conduct a study in this field, including the provisions of the Misrepresentation Act, 1967 (U.K.) and its proposed adoption in this jurisdiction. It is hoped that the report of the Commission will be made before the summer of 1968.

LIAISON WITH OTHER LAW REFORM AGENCIES

99. One of the most gratifying and productive aspects of professional life is the opportunity it affords to establish and maintain liaison and working relations with colleagues round the world in similar lines of endeavour. The field of law reform is no exception to this happy rule and the Commission is privileged to enjoy constant and fruitful communication with a number of law reform agencies. They include the following:

- New York Law Revision Commission
- The Law Commission (England and Wales)
- Scottish Law Commission
- Law Reform Commission (New South Wales)
- Law Revision Commission (New Zealand)
- California Law Revision Commission
- Office of the Director of Law Reform (Northern Ireland)

Institute of Law Research and Reform (Alberta)

Office of Revision of the Civil Code (Quebec)

Law Reform Committee (Manitoba)

Conference of Commissioners on the Uniformity of Legislation
in Canada

To some of these agencies we owe much and in a manner both unabashed and unashamed we have drawn heavily on their work.

100. A special word must be said about the New York Law Revision Commission and its Chairman, Professor John W. MacDonald. In a unique way, Professor MacDonald has impressed his forcefulness and vibrant energy upon the New York Commission and its work. His enthusiasm for the task is infectious and members of our Commission were greatly encouraged and assisted by a visit to that Commission in June, 1966, at a time when we were still in our formative stages.

101. The Commission was greatly pleased and honoured to be visited by the Honourable Lord Kilbrandon, Chairman of the Scottish Law Commission, in December, 1966; Sir Leslie Scarman, Chairman of the Law Commission, in September, 1967; Professor D. G. Benjafield in November, 1965, and Mr. R. D. Conacher in October, 1967, both members of the Law Reform Commission of New South Wales. We derived both pleasure and profit from these visits.

102. It is particularly gratifying to note here the establishment of the second permanent law agency in this country, the Institute of Law Research and Reform (Province of Alberta) under the most capable direction of Dean Wilbur F. Bowker, Q.C., former dean of the Faculty of Law, University of Alberta. This new Institute was established under a tri-partite agreement between the Province of Alberta, the Law Society of Alberta and the University of Alberta. It would be ungenerous not to recognize the quality of the work in the field of law reform which was performed by its predecessor, the *ad hoc* Law Reform Committee. We look forward to a happy association with this new permanent body.

103. The knowledge of the Commission of developments in law reform has been greatly enhanced by the periodic Bulletin of Legal Developments prepared by the British Institute of International and Comparative Law and the annual List of Official Committees, Commissions and Other Bodies Concerned with the Reform of the Law prepared by the Institute of Advanced Legal Studies, London, under the directorship of Professor J. N. D. Anderson. The Commission pays tribute to the late K. Howard Drake, Secretary and Librarian of the Institute. He was a good friend of Canada and Canadians and will be greatly missed on this side.

104. Close liaison with the Conference of Commissioners on Uniformity of Legislation in Canada is maintained through the Chairman of our Commission who holds membership in both groups. While the function of the Conference is directed primarily to achieving uniformity of laws, its work reflects substantial gains in the area of law reform.

DRAFTING

105. Legislative draftsmen in this jurisdiction are in short supply. We suspect that this unhappy state prevails in most jurisdictions. The problem for us has been solved only by the consummate skill, untiring efforts and complete co-operation of Senior Legislative Counsel, L. R. MacTavish, Esq., Q.C. To him and his efficient staff we owe a great debt and render sincere thanks.

PERSONNEL

106. As stated at the beginning of this report, the Honourable J. C. McRuer, LL.D. was its first member and Chairman. The remaining members were H. Allan Leal, Q.C., LL.D., of Toronto; the Honourable R. A. Bell, P.C., Q.C., M.P., of Ottawa; W. Gibson Gray, Q.C., of Toronto; and W. R. Poole, Q.C., of London. Mr. McRuer resigned as Chairman on July 1, 1966, but happily he continues as an active member of the Commission. On that date he was succeeded as Chairman by Mr. Leal. At its meeting on July 12, 1966, the Commission adopted the following resolution which memorializes the outstanding contribution of its first Chairman:

"The Members of the Ontario Law Reform Commission desire to express to their first Chairman, the Honourable James C. McRuer, on the occasion of his relinquishing that office, their deep respect, abiding admiration and warm appreciation. His colleagues acknowledge with sincere gratitude his stimulating leadership and his understanding and co-operative guidance as their presiding officer. The initial and important work of the Commission bears the clear stamp of his judicial wisdom, his scholarly knowledge of the law and appreciation of basic legal principles, his original and cultured mind, his initiative and zeal for progressive reform, his patient industry and his gentle firmness.

The Members of the Commission record their sense of privilege in having served under so distinguished and learned a jurist and so fine a gentleman."

107. The first counsel to the Commission, W. B. Common, Esq., Q.C., resigned his office on May 23, 1967. The Commission and, indeed, the general public of this province owe him much for his long years of devoted public service and it is a privilege to thank him on their behalf. Dr. Richard Gosse, Q.C., formerly of the Faculty of Law, Queen's University, succeeded Mr. Common as Counsel to the Commission on a part-time basis as of July 31, 1967 and on a full-time basis effective January 1, 1968.

108. The Secretary and general staff of the Commission have rendered efficient, devoted and loyal service for long hours and in a manner that evokes one's admiration and gratitude.

RELATIONS WITH THE PUBLIC — LEGAL AND LAY

109. Although the Commission has not extended a formal invitation for suggestions on topics for law reform, except to the extent that representations have been asked on specific projects under review from time to time, we have enjoyed a steady flow of helpful suggestions from the Bench, the Bar and the lay public. Our relations with the organized Bar have been strengthened through the good offices of F. Joseph Cornish, Q.C., Vice-President for Ontario of the Canadian Bar Association. We regard the establishment of a permanent secretariat in the Ontario Branch of the Association under the dedicated and imaginative supervision of George A. Johnston, Q.C., as a vital factor in enhancing the impact of the important work of that Association on government and the public generally. The Chairman of this Commission has been privileged and inspired in working as a member of the Programme Committee of the Association and it is felt that close liaison has resulted in mutual benefit.

110. The Commission welcomes and values most highly suggestions for law reform projects from all sources and endeavours, by its warm reception of such suggestions, to encourage donors to maintain a lively interest in its work. The Commission's tasks are complex, diversified and of great number. Helpful suggestions from the Bench, the Bar and members of the public assist materially in establishing priorities for tasks to be undertaken.

THE FUTURE OF LAW REFORM

111. Laws and legal institutions must be adjusted from time to time to meet the social and economic needs of a society that is subject to continuous change. The history of mankind from earliest times reflects this experience and in that sense law reform is neither novel nor recent. What is new and challenging for us is not only the extent of the change but its rate. The spectre of obsolescence predating creation may not be as disturbing as it once was but it is nonetheless real.

112. Reform is not solely a matter of functional change. Obviously laws must be fashioned to meet the present demands of man in the daily ordering of his practical affairs. This requires excission, rationalization and innovation in the rules by which we conduct those affairs. Perhaps more importantly, reform is a matter of conceptual change. Our laws and institutions must be updated to accommodate an evolving sense of justice. What may have seemed fair and just to our forebears is frequently unacceptable in our day.

113. The means by which we intend to pursue our objectives include consultation, comparative analysis and codification. Sound law reform can be based only on research that is as concerned with sociological fact as it is with doctrinal fact. Time and cost are relative factors and are meaningful only in terms of the quality of the product. The closest consultation with those in and out of the legal profession is necessary to avoid any attempt at problem-solving in a vacuum.

114. The constant reference to materials and the experience in other jurisdictions frequently results in economy of effort and a product of higher quality. Socio-legal problems have the nasty attribute of being repetitive and the experience of others, whether in the civil or common law systems, may provide helpful guide-posts towards better solutions of our own problems.

115. The principle of codification is used not in any narrow or restrictive sense but rather to describe the process by which the body of rules in any given area of the law is brought into harmony with itself and with the total fabric, locally and nationally. All this must be achieved without denuding the law of the ability to grow and adapt to changing conditions. This is the heritage and the hallmark of the common law. Preoccupation with the present may yield an encompassing rigidity as restraining as the shackles of the past. In his inspirational monograph on "The Growth of the Law", Benjamin Cardozo expressed the thought in the following terms:

"Existing rules and principles can give us our present location, our bearings, our latitude and longitude. The inn that shelters for the night is not the journey's end. The law, like the traveler, must be ready for the morrow. It must have a principle of growth."

CONCLUSION

116. The Commission wishes to express to you, Mr. Attorney, and to the Deputy Attorney General special thanks for your and his interest in all aspects of its work and for the unfailing and understanding co-operation at all times extended. The Commission recognizes the magnitude of the task that lies ahead, but is encouraged by the progress achieved.

H. ALLAN LEAL,
Chairman

J. C. McRUER,
Commissioner

R. A. BELL,
Commissioner

W. GIBSON GRAY,
Commissioner

W. R. POOLE,
Commissioner

January 15, 1968.

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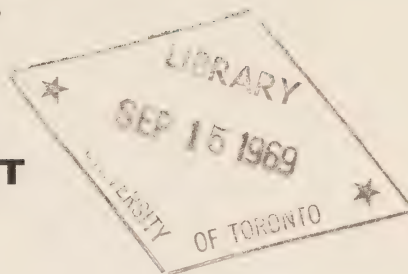
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Publications



ONTARIO

SECOND ANNUAL REPORT

1968



ONTARIO LAW REFORM COMMISSION

DEPARTMENT OF JUSTICE



ONTARIO LAW REFORM COMMISSION

SECOND ANNUAL REPORT

1968



DEPARTMENT OF JUSTICE

The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act, 1964*, for the purpose of promoting the reform of the law and legal institutions. The Commissioners are:

H. ALLAN LEAL, Q.C., LL.M., LL.D., *Chairman*

HONOURABLE JAMES C. McRUER, S.M., LL.D.

HONOURABLE RICHARD A. BELL, P.C., Q.C.

W. GIBSON GRAY, Q.C.

WILLIAM R. POOLE, Q.C.

Dr. Richard Gosse, Q.C., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are located on the Sixteenth Floor at 18 King Street East, Toronto, Ontario, Canada.

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ONTARIO LAW REFORM COMMISSION

PARLIAMENT BUILDINGS
TORONTO 2

Sixteenth Floor
18 King Street East
Toronto 1, Ontario

TO THE HONOURABLE A. A. WISHART, Q.C.,
MINISTER OF JUSTICE AND
ATTORNEY GENERAL FOR ONTARIO.

SECOND ANNUAL REPORT 1968

Dear Mr. Attorney:

We have the honour to present the Second Annual Report of the Ontario Law Reform Commission.

INTRODUCTION

1. Section 2 (3) of *The Ontario Law Reform Commission Act, 1964* requires the Commission to report from time to time to the Attorney General. Since its inception it has been the practice of the Commission to report on individual projects in its programme as and when the research work on these projects has been completed and recommendations formulated for remedial legislation. Frequently these reports include a draft bill illustrative of the form of the remedial legislation. A list of the project reports submitted since the establishment of the Commission in 1964 will be found as Appendix A to this report.

2. The first Annual Report 1967 dealt with the activities of the Commission for the period from November, 1964 to December 31, 1967. This second Annual Report deals with the period ending March 31, 1969.

THE PROGRAMME: GENERAL OBSERVATIONS

3. The programme of the Commission comprises matters referred to it by the Attorney General and matters initiated by the Commission itself. The programme is a continuing one in the sense that the projects

for study are added from time to time, carried through the stages of research, consultation, evaluation and report and then removed from the agenda. Major projects inevitably extend over considerable periods of time. During the past year work was completed on eight projects and reports thereon were submitted to the Attorney General as follows:

- i. Report with respect to the limitation period for actions under *The Sandwich, Windsor and Amherstburg Railway Act, 1930*;
- ii. Report on certain aspects of the proposed divorce legislation contained in Bill C-187(Can.);
- iii. Report on the proposed adoption in Ontario of the Uniform Wills Act;
- iv. Report on the protection of privacy in Ontario;
- v. Report on *The Insurance Act*, R.S.O. 1960, c. 190, s. 183, as amended Stat. of Ont. 1961-62, c. 63, s. 4 dealing with settlement options and the right of commutation;
- vi. Report on the trade sale of new houses and the doctrine of *caveat emptor*;
- vii. Interim report on landlord and tenant law applicable to residential tenancies; and
- viii. Report on the law governing limitation of actions.

I — THE PROGRAMME: REFERRED MATTERS

4. Section 2 (1) (d) of *The Ontario Law Reform Commission Act, 1964* provides that it is the function of the Commission to inquire into and consider any matter relating to any subject referred to it by the Attorney General. Two major referred matters were dealt with during the year.

(i) *Basis for Compensation on Expropriation*

5. By reference dated March 8, 1966 the Commission was asked to consider and report on the basis for compensation under *The Expropriation Procedures Act, 1962-63*. This investigation was thus limited to a study of the basis for assessing compensation and touched on matters of procedure on expropriation only to the extent that they directly affect the amount of compensation payable. The Commission submitted its report to the Attorney General on September 21, 1967. The broader aspects of procedure were considered by the Royal Commission Inquiry into Civil Rights and were dealt with in Volume 3 of Report No. 1 of that Commission, tabled on March 5, 1968. The combined recommendations of these two reports formed the basis of new legislation enacted as *The Expropriations Act, 1968-9* which received Royal Assent on December 20, 1968.

(ii) *Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies*

6. In the Annual Report 1967 reference was made to the fact that Section VI of the research project on the Law of Property was devoted to the law of landlord and tenant. The project had been initiated by the Commission and Professor Morley R. Gorsky, Faculty of Law, Queen's University, had been appointed research supervisor of this particular section. During the course of 1968 it became increasingly apparent that the problems respecting residential tenancies required urgent attention and at the request of the Attorney General work in this particular area was given priority and additional research personnel allocated. The Commission submitted its interim report on December 10, 1968. Recommendations were made for remedial legislation involving the law governing distress, security deposits, contracting out, obligations to repair, restrictions against children, restrictions against trading, acceleration of payment of rent, mitigation of damages upon the abandonment of premises by the tenant, the applicability of the doctrine of frustration, termination of tenancies, the independence of lease covenants, the lessees' rights prior to taking possession (*interesse termini*), covenants relating to things in being (*in esse*) and things not in being (*in posse*), conciliation and rent review through leasehold advisory bureaux, procedures on adjudication and protection from retaliatory eviction.

7. Our research continues on other aspects of the law governing the relation of landlord and tenant including industrial and commercial leases. It is hoped that it will be possible with further study to simplify, consolidate and codify the law in this field. An important aim of such further study is to express the law and leases made pursuant to it in simple, easily understood and modern terminology. A simple standard form of lease for ordinary use is most desirable and particularly in the absence of the ability to contract out, may be more easily attainable.

II — THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

8. The Commission, by virtue of the provisions of section 2 of *The Ontario Law Reform Commission Act, 1964*, is empowered to initiate projects of its own motion and may institute and direct legal research for the purpose of carrying out its functions. A substantial part of the programme of the Commission emanates from this aspect of its jurisdiction and, in the year under review, included the following matters.

(a) — Completed Projects

(i) *Limitation of Actions*

a. Limitations Generally

9. A comprehensive research project involving the law on limitation of actions was initiated by the Commission in 1965. An exhaustive comparative analysis was made of the limitations legislation, studies and reports in other jurisdictions with particular reference to the experience of those most active in the field. In commonwealth countries these

include Alberta, Manitoba, England and New South Wales. Special attention was also given to the model act of the Conference of Commissioners on the Uniformity of Legislation in Canada.

10. The Commission has completed its deliberations and submitted its report to the Attorney General. The report contains recommendations for the enactment of a new limitations statute designed to remove the archaisms which at present abound in the main statute, to reform basic principles to accord with present-day philosophy and conditions, and which would integrate, in so far as is possible, the existing multifarious and scattered limitations provisions into a comprehensive and comprehensible code.

11. Traditionally, in many common law jurisdictions, prescriptive easements and adverse possession of real property are dealt with in the main limitations statute. This is true of existing legislation in Ontario. The report of the Commission deals with the former, recommending their abolition for the future, but leaves the latter to be dealt with in its report on the law of property project.

12. Rationalization, renovation and codification are needed in many areas of the law. It is difficult to conceive of an area more in need of these processes than the present law governing limitation of actions. The task of laying a sound base for reforms has been formidable but satisfying. In the first Annual Report recognition was given to those who assisted us in the necessary research. Special thanks are tendered here to Dr. Richard Gosse, Q.C., Counsel to the Commission. The report bears the stamp of his industry and scholarship.

b. The Sandwich, Windsor and Amherstburg Railway Act, 1930

13. An anomaly which was explainable on historical grounds but not justified on any ground was corrected by the enactment of *The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968*, based upon a Commission report presented January 8, 1968.

14. The amendment places this particular company in the same position as other companies engaged in like activities within the province.

(ii) *The Divorce Act (Can.)*

15. During the latter part of 1967 the Commission considered the consequences for the Province of Ontario of the enactment by the Parliament of Canada of Bill C-187 dealing with substantial changes in the law of divorce and ancillary relief. Although legislation in relation to marriage and divorce is a matter of federal legislative competence, the Commission has a special interest in the field in view of its project on Family Law and the broad and important areas that lie within the competence of the Provincial Legislature in exercising its jurisdiction in relation to matters involving property and civil rights.

16. The report of the Commission filed with the Attorney General on January 10, 1968 dealt with four matters: the advisability of giving

jurisdiction in divorce matters to the county and district courts concurrently with the High Court of Justice of the Supreme Court of Ontario; the law of annulment of marriage; ancillary relief; and domicile.

17. The initial draft of the Bill would have removed all annulment jurisdiction from the Ontario courts. Bill C-187 was subsequently amended in the Senate and, as enacted, the legislation provides for the retention of annulment jurisdiction in Ontario.

(iii) *The Uniform Wills Act*

18. As indicated in the first Annual Report 1967 the section of the Commission's law of property project dealing with testate succession involved primarily the proposed adoption in Ontario of the model Wills Act of the Conference of Commissioners on the Uniformity of Legislation in Canada. A Committee of the Wills and Trusts Sub-Section of the Canadian Bar Association had made a comparative study of the Ontario Wills Act and the Uniform Act. The Committee reported to the Ontario Branch at its Mid-Winter Meeting in February, 1966 recommending the enactment in Ontario of the Uniform Act, subject to certain amendments. The Ontario Branch accepted and approved the report and suggested study of the subject by the Ontario Law Reform Commission.

19. After having given extensive study to the report of the Bar Committee and to certain amendments of the Uniform Act not available for consideration by them, the Commission reported to the Attorney General on February 5, 1968 with a draft bill and recommended its enactment at an early date.

(iv) *The Protection of Privacy in Ontario*

20. The Commission initiated a preliminary study to determine the nature of the existing and growing problems in the area referred to compendiously as the "right to privacy" and the extent to which the solution to these problems might fall within the legislative competence of the provincial legislature.

21. Professor Edward F. Ryan, Faculty of Law, University of Western Ontario, was retained to conduct the necessary research. The study involved an attempt to delineate the legitimate boundaries of privacy, the relevant Canadian law, and to ascertain whether this basic social value was in jeopardy from the use and misuse of the products of our modern technological revolution and developing practices both in the public and private sectors of our lives.

22. The report of the preliminary study which was submitted to the Attorney General on September 10, 1968 contains an analysis of the constitutional considerations, a survey of existing federal and provincial law, and a twenty-point proposal indicating the areas and matters that would require further and intensive study before a legislative programme could be undertaken.

23. Although convinced of the necessity for such further empirical study, the Commission believes that it is not the body to conduct the inquiry. The Commission does not have the full range of powers, such as authority to call witnesses and examine them under oath, that are necessary in the circumstances.

(v) *The Insurance Act — settlement options and the right of commutation*

24. The provisions of section 183 of *The Insurance Act*, R.S.O. 1960, c. 190, as amended by Statutes of Ontario, 1961-62, c. 63, deal with the situation where the insured by the original contract or a subsequent instrument signed by him and delivered to the insurer has elected one of the settlement options governing the payment of the proceeds of a life insurance policy on maturity. In this event, the capital sum representing the proceeds of the policy is left with the insurer to be paid to the beneficiary in instalments. Where the insured has stipulated that the beneficiary has not the right to commute the instalments the legislation provides that as a general rule the insurer shall not commute them without the consent in writing of the insured.

25. Prior to 1962, the legislation empowered the court, upon the application of the insurer or the beneficiary, to declare that in view of special circumstances the beneficiary should have the right to commute. In addition, it was provided that the personal representatives, on the death of the beneficiary, had a similar right. The jurisdiction directing commutation was exercised in cases where the court felt that hardship would result to the beneficiary if payments were restricted to the relatively small amounts of the instalments.

26. Under the provisions of the 1962 amendments, the consent of the insurer is required for commutation even in those cases where the court deems commutation proper. Accordingly, the opportunity for relief is seriously and unjustifiably restricted.

27. In its report to the Attorney General filed on October 3, 1968, the Commission recommended:

- i. that section 183 (2) be amended to restore the original wording which would empower the court in special circumstances, on the application of the beneficiary, to declare that the beneficiary may commute without the consent of the insurer;
- ii. that section 183 (3) be amended to restore the original wording giving the personal representative of the beneficiary the right to commute without the consent of the insurer; and
- iii. that section 183 be amended to make it clear that the power to permit commutation in special circumstances is a power which can be exercised from time to time. This latter recommendation concerns a matter left in some doubt even under the former legislation.

(vi) *Trade Sale of New Houses and the Doctrine of Caveat Emptor*

28. The Commission initiated a study of the law of Ontario concerning defects of quality of workmanship and materials in new dwelling houses sold in the province. We have noted that a considerable anomaly exists between the protection which the law affords to purchasers of chattels and that which it affords to the purchaser of houses, the latter being required to satisfy himself as to the quality and fitness of materials and workmanship even though adequate inspection may involve partial destruction of parts of the premises. This is the application of the doctrine of *caveat emptor* in the most rigid and absurd manner.

29. After careful preliminary research, the Commission decided to limit the study to the *trade* sale of *new* houses. We believe, at this time, that the prospective liability of non-trade vendors or vendors of older and used houses should not be increased. We were convinced, however, that the prospective liability of those engaged in the business of selling new houses to the public for profit should be broadened and made more strict.

30. It was apparent from our study that there are six basic approaches to the rectification of the problem of *caveat emptor* in new house sales. These are:

- i. registration of builders;
- ii. inspection during construction;
- iii. insurance covering liability;
- iv. quality control by mortgagees or guarantors;
- v. warranties implied by law; and
- vi. obligations imposed by statute.

31. The Commission reported to the Attorney General on October 4, 1968 recommending the enactment of legislation, restricted to the *trade* sale of *new* houses, which would impose duties and obligations on builders and vendors to ensure that new houses built or sold should be fit for habitation; built of proper material in a good and workmanlike manner; and free from latent defects in construction. A builder or vendor who failed in the duties imposed by the statute would be liable in damages, in the alternative to existing remedies, at the suit of the purchaser or his successor in title for a limited period.

(b) — Projects in Process

(i) *Family Law*

32. The Annual Report 1967 contained a detailed description of the Commission's Family Law Project. The first instalment (Volumes I-IV) of the study of the research team, entitled "Property Subjects", was published on January 16, 1968. During the course of the year the proposals were considered by interested groups, including a full day's

discussion by the members of the legal profession at the Annual Mid-Winter Meeting of the Ontario Branch of the Canadian Bar Association in Toronto on Friday, February 2, 1968. The Commission wishes to express its thanks to all those who have given us the benefit of their helpful comments. The report on this aspect of the project is now being prepared and will deal with the proposed division of matrimonial property on separation, by application of the spouses in certain circumstances, on dissolution of the marriage by divorce or death; the rights of husband and wife with respect to the matrimonial home; dower; curtesy; the nature of support obligations involving husband and wife, parent and child; succession by illegitimate children; intestate succession and a revised summary procedure for the administration of small estates.

33. The second instalment (Volumes V-VIII) of the study of the research team was published on January 27, 1969. These volumes deal with the law governing solemnization of marriage; torts in the family relations; and jurisdiction and recognition in divorce, annulment and declarations of status. The Commission's report on Marriage is now being prepared.

34. The work of the research team on the remaining topics of the project has been completed and the final editorial work, prior to publication, is being done on the third instalment of the study (Volumes IX-XIII). The matters dealt with in these volumes include the law relating to children, separation and divorce, the enforcement of support obligations, the family court and social services. This third and final instalment will be released for comment in the very near future.

35. Recognition has already been given to the outstanding contribution of Professor Ian F. G. Baxter, the Director of the project, the members of his research team, the members of the Advisory Council, the administrative staff and others associated with this project. We are grateful to them all for their invaluable assistance. The Family Law Project is certainly the most ambitious and comprehensive review of this area of the law ever undertaken in this jurisdiction. Although much remains to be done by the Commission in considering the research studies and recommendations and preparing the final report, we feel confident that the results of the project to date have justified the time, money and effort expended upon it.

(ii) *Law of Property Project*

36. The review of the law of property continued during the current year. Reference has already been made to the section of the project dealing with the law of landlord and tenant, the progress that has been made and the scope of the further study. The other sections of this project to which attention was devoted this year were land registration; basic principles of real property law; *The Trustee Act* and associated statutes; and community planning, development and land use control. Work on the land registration section is well advanced and we hope to be able to submit a report to the Attorney General within the calendar year.

(iii) *Age of Majority*

37. The scope of this project covers a reconsideration of the age at which persons should acquire legal capacity to enter into normal contractual relations, the power to hold and dispose of property, the optimum age for termination of maintenance, the legal limits of parental control and the law relating to contracts entered into by minors. The research has been completed and the project report is being prepared.

(iv) *The Law of Evidence*

38. This project is under the direction of Dr. Alan W. Mewett, Faculty of Law, University of Toronto, and its scope covers the whole field of evidence in both civil and criminal matters.

39. In our previous annual report we indicated that the question of admissibility of a certificate of a conviction in a criminal case as evidence in subsequent civil proceedings had been singled out for advance study. It was a matter of some concern that the rule in *Hollington v. Hewthorn* was thought to be broad enough to preclude the admissibility of a decree in one divorce suit grounded on adultery, as evidence of adultery in a subsequent suit involving the same parties. The doubt has now been resolved in this jurisdiction by a recent decision (*Love v. Love*, [1969] 1 O.R. 291) which holds that the issue of adultery is *res judicata* and the judgment is *in rem*. Production of the judgment is sufficient, subject to the identification of the parties. This determination would appear to have given legal recognition to an already well-established practice.

40. Other problems in the application of the rule in *Hollington v. Hewthorn* are not so easily resolved and no acceptable solution of general application has yet been formulated.

(v) *Innocent Misrepresentation in the Law of Contract*

41. This project involved a preliminary study of the *Misrepresentation Act, 1967* (U.K.) against the background of the decisional law of this jurisdiction and the Report of the Contracts and Commercial Law Reform Committee of New Zealand on Misrepresentation and Breach of Contract, dated March, 1967. An interim report was submitted to the Commission but further work has been deferred.

(vi) *Compensation for Injury Arising out of the Exercise of Statutory Authority*

42. This project was initiated by the Commission and added to its programme in 1968. The director of the project is the Honourable J. C. McRuer, S.M., LL.D., Vice-Chairman of the Commission, and Professor J. B. Dunlop, Faculty of Law, University of Toronto, has been appointed its research supervisor. Preliminary studies have been made in an attempt to delineate the practical limits of the inquiry. Basically we are concerned to review the chief areas where private individuals suffer non-compensable loss arising out of the exercise of statutory powers and where the plea of statutory authority affords a defence to recovery. The

study inevitably involves a consideration of the immunity of the Crown and its agencies but is obviously not limited to these cases. Indeed, the relevant issues range over the whole area of conflict between public benefit and private interests and invite a redetermination of how losses ought to be borne. The loss of economic expectations through the exercise of municipal zoning power is illustrative of the magnitude of the problem and also points the necessity for defining the practical limits of any ameliorating principle.

(vii) *Compensation for Victims of Motor Vehicle Accidents*

43. Work on this project was suspended for the fiscal year 1968-9 due to lack of funds to sustain it. During the period covered by this report there were two developments relevant to the Canadian experience and the terms of reference of our project. The first was the publication of the Report of the Royal Commission on Automobile Insurance, Province of British Columbia, dated July 30, 1968. The second was the proclaiming in force on January 1, 1969 of amendments to *The Insurance Act* of Ontario enabling insurance companies in Ontario to issue policies providing for basic accident compensation in automobile cases irrespective of fault. With the provision of funds in the budget for 1969-70 work on the project has been resumed.

LIAISON WITH OTHER LAW REFORM AGENCIES

44. Throughout the year we enjoyed continuing liaison and co-operation with most of the permanently-established law reform agencies round the world. We were honoured with visits to our Commission by Wilbur F. Bowker, Esq., Q.C., the Director of the Institute of Law Research and Reform, Province of Alberta; by W. A. Leitch, Esq., C.B., LL.M., First Parliamentary Draftsman, Northern Ireland, and titular head of the Office of Law Reform there; by the Honourable Mr. Justice Manning, Chairman of the Law Reform Commission, New South Wales; and L. C. B. Gower, Esq., M.B.E., a member of the Law Commission (England and Wales).

45. The Chairman of our Commission was privileged to visit, in July last, the offices of the Law Commission (England and Wales), London; the offices of the British Institute of International and Comparative Law, London; and the Institute of Advanced Legal Studies, University of London. We continue to rely heavily on the Bulletin of Legal Developments compiled by Dr. N. March Hunnings and published by the British Institute, for current information on legal developments throughout the world. We were also pleased to re-establish communication with the Institute of Advanced Legal Studies through W. A. Steiner, Esq., Secretary and Librarian, and to participate in the work of revision of their programme information service dealing with law reform agencies.

46. The growth in the number of these agencies continues apace and since our last annual report we have been pleased to observe the establishment of the Law Reform Commission, Western Australia (1968), the Law Reform Committee of South Australia (1968), and the Florida Law Revision Commission (1968).

47. On October 18, 1968 the federal Minister of Justice announced publicly his hopes for the early establishment of a national law reform commission to take and keep under review on a continuing basis, the laws falling within the jurisdiction of Parliament. Also announced was the intention to establish a permanent research division within the Department of Justice, Ottawa, and the creation of the Canadian Judicial Conference to conduct annual seminars for representative federal and provincial superior court judges. If and when effected, these developments will represent solid advances in the evolution of our law and legal institutions.

48. At the university level, we were encouraged to note the establishment this year of the Legal Research Institute, University of Manitoba; the Law Revision Center, University of Colorado; and the Institute of Judicial Administration, University of Birmingham (England).

THE FUTURE

49. With the passage of approximately five years of the existence of the Commission, one can mark the end of a modest beginning in the process of substantive law reform over a wide range of subject matters. This work must be pursued at even accelerated rates if we are to remedy present defects and keep abreast of rapidly changing events. Impressive though the task may seem, its main outlines are cognizable and, like most problems, it loses its awe when its dimensions are known.

CONCLUSION

50. The Commission conveys its thanks to our research assistants in the law schools, the legal profession and the central offices of the Commission for the painstaking and scholarly work performed during the year. We are particularly indebted to Counsel, the Secretary and the administrative staff of the Commission for continued devoted service.

51. Finally, may we express our gratitude to you, Mr. Attorney, and to the Deputy Attorney General. Enthusiasm is infectious whilst encouragement is a healing balm. We have lacked neither in your support of our endeavours.

All of which is respectfully submitted,

H. ALLAN LEAL,
Chairman.

JAMES C. McRUER,
Commissioner.

RICHARD A. BELL,
Commissioner.

W. GIBSON GRAY,
Commissioner.

WILLIAM R. POOLE,
Commissioner.

April 7, 1969.

APPENDIX A

REPORTS MADE BY THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Recommendations Implemented by
No. 1 The Rule Against Perpetuities	February 1, 1965	—
No. 1A Supplementary Report on the Rule Against Perpetuities	March 1, 1966	The Perpetuities Act, 1966, Stat. of Ont. 1966, c. 113
No. 2 The Wages Act; Assignment of Wages	March 3, 1965	The Wages Amendment Act, 1968, Stat. of Ont. 1968, c. 142.
No. 3 Personal Property Security Legislation	March 28, 1965	—
No. 3A Supplementary Report on Personal Property Security Legislation	May 18, 1966	The Personal Property Security Act, 1967, Stat. of Ont. 1967, c. 72
The Evidence Act; Admissibility of Business Records	February 16, 1966	The Evidence Amendment Act, 1966, Stat. of Ont. 1966, c. 51, s. 1
The Mechanics' Lien Act	February 22, 1966	—
Supplementary Report on The Mechanics' Lien Act	May 26, 1967	—
Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	—
The Execution Act: Exemption of Goods from Seizure	December 9, 1966	The Execution Amendment Act, 1967, Stat. of Ont. 1967, c. 27
The Law of Condominium	March 6, 1967	The Condominium Act, 1967, Stat. of Ont. 1967, c. 13
Basis for Compensation on Expropriation	September 21, 1967	The Expropriations Act, 1968-9
The Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968, Stat. of Ont. 1968, c. 120
Annual Report 1967	January 15, 1968	—
Certain Aspects of the Proposed Divorce Legislation contained in Bill C-187 (Can.)	January 19, 1968	—
The Proposed Adoption in Ontario of the Uniform Wills Act	February 5, 1968	—

Title	Date of Report	Recommendations Implemented by
The Protection of Privacy in Ontario	September 10, 1968	---
The Insurance Act, R.S.O. 1960, c. 190, s. 183, as amended Stat. of Ont. 1961-62, c. 63, s. 4 (com- mutation)	October 3, 1968	---
Trade Sale of New Houses and the Doctrine of Caveat Emptor	October 4, 1968	---
Interim Report on Land- lord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	---
Limitation of Actions	February 3, 1969	---

NOTE: All inquiries concerning reports of the Commission should be directed to The Secretary, Ontario Law Reform Commission, Sixteenth Floor, 18 King Street East, Toronto 1. If in print they are available free of charge.

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ONTARIO

THIRD ANNUAL REPORT

1969

ONTARIO LAW REFORM COMMISSION



DEPARTMENT OF JUSTICE



ONTARIO LAW REFORM COMMISSION

THIRD ANNUAL REPORT

1969



DEPARTMENT OF JUSTICE

The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act, 1964*, for the purpose of promoting the reform of the law and legal institutions. The Commissioners are:

H. ALLAN LEAL, Q.C., LL.M., LL.D., *Chairman*

HONOURABLE JAMES C. McRUER, S.M., LL.D.

HONOURABLE RICHARD A. BELL, P.C., Q.C.

W. GIBSON GRAY, Q.C.

WILLIAM R. POOLE, Q.C.

Edward F. Ryan, LL.B., LL.M., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are located on the Sixteenth Floor at 18 King Street East, Toronto, Ontario, Canada.

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ONTARIO LAW REFORM COMMISSION

PARLIAMENT BUILDINGS
TORONTO 2

Sixteenth Floor
18 King Street East
Toronto 1, Ontario

TO THE HONOURABLE A. A. WISHART, Q.C.,

MINISTER OF JUSTICE AND
ATTORNEY GENERAL FOR ONTARIO.

THIRD ANNUAL REPORT 1969

Dear Mr. Attorney:

We have the honour to present the Third Annual Report of the Ontario Law Reform Commission.

INTRODUCTION

1. Section 2 (3) of *The Ontario Law Reform Commission Act, 1964* requires the Commission to report from time to time to the Attorney General. Since its inception it has been the practice of the Commission to report on individual projects in its programme as and when the research work on these projects has been completed and recommendations formulated for remedial legislation. Frequently these reports include a draft bill illustrative of the form of the remedial legislation. A list of the project reports submitted since the establishment of the Commission in 1964 will be found as Appendix A to this report.

2. The first Annual Report 1967 dealt with the activities of the Commission for the period from November, 1964 to December 31, 1967. The second Annual Report covered the period beginning January 1, 1968 and ending March 31, 1969. This third Annual Report deals with the period ending March 31, 1970.

THE PROGRAMME: GENERAL OBSERVATIONS

3. The programme of the Commission comprises matters referred to it by the Minister of Justice and Attorney General and matters initiated by the Commission itself. The programme is a continuing one

in the sense that projects for study are added from time to time, carried through the stages of research, consultation, evaluation and report and then removed from the agenda. Major projects inevitably extend over considerable periods of time. During the past year work was completed on four projects, or sections of projects, and reports thereon were submitted to the Minister of Justice and Attorney General as follows:

- i. Report on the Age of Majority and Related Matters;
- ii. Report on the Status of Adopted Children;
- iii. Report on Family Law, Part I: Torts; and
- iv. Report on Section 20 of *The Mortgages Act*.

I — THE PROGRAMME: REFERRED MATTERS

4. Section 2 (1) (d) of *The Ontario Law Reform Commission Act, 1964* provides that it is the function of the Commission to inquire into and consider any matter relating to any subject referred to it by the Minister of Justice and Attorney General. Two such matters were referred to the Commission during the period covered by this report.

(i) *The Sunday Observance Legislation Project*

5. By reference dated August 15, 1969, the Commission was asked to undertake a study and review of the Sunday Observance Legislation in effect in Ontario. To this end, the Commission has established an extensive research programme for the review of the historical, religious, constitutional, legislative and comparative aspects of the law relating to Sunday Observance. Complementing these areas, the research programme includes an economic study, a sociological opinion survey, and a behavioural study, designed to ascertain the effect of present Sunday Observance Legislation in the community, and to provide background data against which any suggested changes in the law can be assessed.

6. In order to allow both interested individuals and groups to make their views known to the Commission, public notices inviting the presentation of opinions and briefs have been published throughout the province. As of March 31, 1970, the Commission had received 117 formal briefs and many more informal submissions on the question of Sunday Observance Legislation. In addition to the solicitation of written views, the Commission has conducted seven days of public hearings in four Ontario cities. These hearings have thus far allowed the Commission to engage in a structured dialogue with over 50 persons. Some of these persons stated their personal opinions and convictions, while others spoke for associations and groups comprising many thousands of citizens in this province. Five more days of public hearings are scheduled.

7. The Commission's schedule calls for completing the research programme by June, 1970, and thereafter undertaking the task of synthesizing and analyzing the data and views obtained. This work is expected to be finished during the current year.

8. Studies on various topics of the research programme are being conducted by Professor W. R. Lederman, Q.C., Faculty of Law, Queen's

University (Constitutional and Legislative Study); Professor Kenneth Hardy, School of Business Administration, University of Western Ontario (Economic Study); Rev. Canon Maurice P. Wilkinson of the Canadian Council of Churches (Religious Study); the Social Survey Research Centre (Sociological Opinion Survey); National Polling Trends, Ltd. (Behavioural Study); and Mr. Anthony Butler of the Ontario Bar (Comparative Research).

9. The Sunday Observance Legislation Project has presented the Commission with many unique practical and theoretical problems involving a broad variety of situations and disciplines. It has been greatly assisted in its task through the skills and efforts of Professor R. G. Atkey, Counsel to the Project, from the Faculty of Law, University of Western Ontario, and by Mrs. P. A. Black, Secretary to the Project.

(ii) *Law Relating to the Sale of Goods*

10. By reference dated February 12, 1970, the Commission was asked by the Attorney General to consider certain resolutions of the Council of the Ontario Branch of the Canadian Bar Association suggesting that *The Sale of Goods Act* is inadequate for the purpose of present day business; that the Commission study and report on the existing law relating to sale of goods; and that consideration be given to the adoption of the principles and approaches of Article 2 of the Uniform Commercial Code. Since the Commission's resources are at present fully committed to projects which have been given an established priority, work on this new topic for study cannot be undertaken for at least one year. Until such time, the Commission will consult with experts in the law of sale of goods, assess the nature and extent of the research required, and formulate the basic structure and objects of the project.

II — THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

11. The Commission, by virtue of the provisions of section 2 of *The Ontario Law Reform Commission Act, 1964*, is empowered to initiate projects of its own motion and may institute and direct legal research for the purpose of carrying out its functions. A substantial part of the programme of the Commission emanates from this aspect of its jurisdiction and, in the year under review, included the following matters.

(a) — Completed Projects

(i) *The Age of Majority and Related Matters*

12. The Commission initiated a study concerning the desirability of improving certain aspects of the law as it relates to young persons in this province. The Commission's Report was forwarded to the Minister of Justice and Attorney General on May 12, 1969. The study disclosed that many of our present laws affecting young persons are based upon concepts that date back to the Middle Ages. Recommendations designed to bring the law into line with the realities of modern social conditions were accordingly made.

13. The main problem considered in the Commission's Report was whether there should be an alteration in the age at which young persons attain their majority and become fully capable of entering into binding contracts, disposing of their property, representing themselves in litigation, acquiring separate domicile, and otherwise become free of those incapacities which the present law imposes upon persons below the age of majority. In Part I of the Report, the Commission recommended that the age of majority should be lowered to eighteen years; that the moment of attaining an age in law should be at the commencement of the day which is the relevant anniversary of the person's day of birth; and that the term "minor" is preferable to the term "infant" and should be used wherever possible.

14. The Commission's Report considers two other matters. In Part II, the law of contracts as it applies to those under the age of majority is reviewed. This problem obviously is not eliminated by a reduction in the age of majority but it may be affected significantly by a reduction. Although the law in this respect has some shortcomings, the Commission made no recommendation for its reform at the present time since it seemed preferable to await experience with the new legislation, if enacted.

15. Part III is concerned with the ages at which parental responsibility for maintenance of children and parental control over children should cease. The Commission concluded that the age for maintenance should be raised to eighteen, and accordingly recommended that the following statutes be amended so as to empower the courts to award maintenance in respect of children who are sixteen and seventeen and are in full-time attendance at some educational institution:

The Deserted Wives' and Children's Maintenance Act,
The Children's Maintenance Act,
The Matrimonial Causes Act, and
The Infants Act.

16. In respect of the question of parental control, there appears to be, at present, no effective legal means by which a parent can control an unruly child who has reached his sixteenth birthday. While the general age limit for minors with respect to law breaking and anti-social behaviour was considered to be outside the scope of the Commission's Report, the Commission felt it necessary to make a recommendation concerning parental control, and recommended that section 19 (1) (b) (viii) of *The Child Welfare Act, 1965* be amended so that Part II of that statute will apply to a boy or girl actually or apparently under eighteen years of age whose parent is unable to control him or her.

17. Twenty-eight submissions were received as a result of advertisements inviting the general public to express their views on the subject of the Report. A research paper on the topics covered in the Report was done by Mrs. Anna Bacon Stevenson. The Commission wishes to extend special recognition to the former Counsel to the Commission, Dr. Richard Gosse, Q.C., for his invaluable assistance and scholarship in the preparation of the Report.

(ii) *Status of Adopted Children*

18. A submission was made to the Commission that certain provisions of *The Child Welfare Act, 1965* (S.O. 1965, c. 14) with respect to the status of adopted children do not effectively accomplish the purposes of the Act. The Commission considered the problems raised and submitted its Report to the Minister of Justice and Attorney General on June 3, 1969.

19. Section 82 (3) provides that any reference to "child", "children" or "issue" in a will or other document, whether made before or after the date of the legislation, should be deemed to include an adopted child. It was pointed out in the Report that the provisions of this subsection would apply only where the expressions "child", "children" or "issue" were used in the particular document. Hence, where some other words or terms are used with an intention to convey the same meaning, the subsection would not apply, and an adopted child could therefore not take under the will or other instrument.

20. In the opinion of the Commission, such a result is inconsistent with the scheme of *The Child Welfare Act, 1965*, which is to give to the adopted child the status and benefits of a child born in lawful wedlock. The Commission recommended that section 82 (3) of *The Child Welfare Act, 1965* be amended to make it clear that any reference in a will or other document to kindred or a group or class of kindred of any person shall be deemed to include an adopted child.

(iii) *Report on Family Law, Part I: Torts*

21. The Annual Report 1967 contained a detailed description of the Commission's Family Law Project. The sixth volume of the Study, released to the public in January, 1969, dealt with tort liability with respect to family relations. After giving careful consideration to the relevant working papers, Volume VI of the Study, the helpful comments which were received from interested persons, and after further research particularly with respect to third party liability insurance, the Commission submitted its Report on Torts to the Minister of Justice and Attorney General on November 4, 1969. This was the first in a series of reports which the Commission will submit arising out of its work in the Family Law Project.

22. The Report contains four Parts. The subject of Part I is intrafamily tort immunity. The Commission deals therein with the questions of interspousal tort immunity, the law in regard to parent-child immunity, and related questions arising under those provisions of *The Insurance Act*, R.S.O. 1960, c. 190, that exempt motor vehicle accident insurers from liability for claims by passengers who are the spouse or child of the insured.

23. In Part I the Commission made the following recommendations:

- i. (1) Section 7 of *The Married Women's Property Act* should be repealed insofar as it restricts husband and wife from suing one another in tort.

- (2) Legislation should be enacted stating that husband and wife are entitled to sue one another in tort.
- ii. Section 2 (3) of *The Negligence Act* should be repealed.
- iii. Legislation should be enacted to ensure that the relationship of parent and child will not be a bar to the bringing of proceedings.
- iv. (1) Section 212 (b) (i) of *The Insurance Act* should be repealed.
- (2) Insurers should not be able, by endorsement on a policy, to exempt themselves from liability to passengers on the basis of their relationship to an insured person, as appears to be permissible under section 214 of *The Insurance Act*.

24. In Part II, the law concerning the responsibility of the child for damage caused by him, and the responsibility of his parent for such damage, is reviewed. Also discussed is the standard of care owed to children, as well as the need for clarification of the right of a person to bring an action for pre-natal injuries.

25. No recommendation was made with regard to the responsibility of a child for damage caused by him. The Commission's view is that there is no practical alternative to the existing law. Although it might clarify the law if some minimum age for tort responsibility were specified, the Commission concluded that it would be more desirable to leave this determination to the court in each case.

26. With regard to the responsibility of parents for damage caused by their children, the Commission decided not to recommend any change in the existing rules of common law.

27. After examining the question of pre-natal injuries, the Commission recommended that legislation be enacted so as to entitle a person who sustained such an injury to recover damages.

28. Part III of the Report discusses the old common law actions of criminal conversation, enticement, harbouring, seduction, loss of consortium and loss of services, and recommends their abolition. In addition, a recommendation was made for creation of a statutory right of action to enable family members to recover losses resulting from non-fatal injury to a family member caused by the wrongful conduct of a third person.

29. The Commission would again like to record its recognition of the scholarly assistance of Dr. Richard Gosse, Q.C., former Counsel to the Commission, in the preparation of this Report.

(iv) *Section 20 of The Mortgages Act*

30. The Commission considered certain problems posed by the provisions of section 20 of *The Mortgages Act*, R.S.O. 1960, c. 245, particularly the difficulties of the mortgagor who wishes to pay up his arrears and is met with a refusal by the mortgagee to state the amount of the arrears and to accept any such payment. The tender may be made either to forestall sale or the commencement of an action by the mortgagee, or as a condition precedent to an application to have an action dismissed or proceedings stayed once the action has begun. There is nothing in the section to compel the mortgagee to give a statement of the arrears.

31. In its Report to the Minister of Justice and Attorney General, dated March 12, 1970, the Commission recommended that section 20 be amended to enable the mortgagor to procure a statement of arrears from the mortgagee, and included a draft amendment to *The Mortgages Act*.

32. The Commission also considered those provisions of section 20 (1) (b) that require the mortgagor to pay the arrears and costs prior to making an application to the court to have an action by the mortgagee dismissed or stayed as the case may be. The Commission recommended that section 20 (1) (b) be amended to allow the mortgagor to apply to the court for relief conditional upon payment of the arrears and costs, and further recommended that the application of the mortgagor must be accompanied by payment into court of the sum of \$100 to the credit of the action as security for costs. Mr. McRuer expressed dissent as to the requirement for security for costs. The Commission further recommended that if section 20 is amended as proposed in its Report, then an appropriate change should be made to the Rules of Practice of the Supreme Court of Ontario. A recommended draft rule was included in the Report, as well as a recommended draft clause to be added to "Warning to Defendant" in Form 8 of the Rules of Practice.

33. The Commission wishes to express its thanks to the Rules Committee and the Senior Master for their assistance in this matter.

(v) *The Protection of Privacy in Ontario*

34. As noted in the last Annual Report, the preliminary study and Commission's Report on this topic were submitted to the Attorney General on September 10, 1968. Among the matters dealt with therein was the relationship between the computerized data bank and the protection of privacy. The federal Departments of Communications and Justice, the Information Processing Society of Canada, and Queen's University will jointly sponsor a national conference entitled "Computers: Privacy and Freedom of Information" at Queen's University on May 21-24, 1970. Portions of the Commission's preliminary study and report have been selected and circulated by the sponsors of this national conference as a background paper. The Chairman of the Commission and Counsel to the Commission will attend the conference as representatives of the Province of Ontario.

(b) — Projects in Process

(i) *Family Law*

35. The Annual Report 1967 contained a detailed description of the Commission's Family Law Project. Reform of the kind and on the scale considered will profoundly affect the legal relations and social and economic status of Ontario residents, and therefore demands exhaustive and detailed study.

36. The first instalment (Volumes I-IV) of the research team's study dealt with "Property Subjects", and was published in January, 1968. The Report on this aspect of the Project is still in preparation and will deal with division of matrimonial property on death, divorce, separation, and in certain other situations that may occur during the

marriage; the rights of husband and wife with respect to the matrimonial home; dower; curtesy; the nature of support obligations involving husband and wife and parent and child; succession by illegitimate children; intestate succession; and a revised summary procedure for the administration of small estates.

37. The second instalment (Volumes V-VIII) of the study was published in January, 1969. These volumes deal with the law governing solemnization of marriage; torts in the family relations; and jurisdiction and recognition in relation to divorce, annulment and declaration of status.

38. During the preparation of this Report, the Commission's Report on Marriage, based upon Volume V of the Family Law study was presented to the Minister of Justice and Attorney General. The Commission has recommended many changes in the law relating to the engagement to marry and the solemnization of marriage in the province. These changes are designed to make the law conform to modern economic and social conditions, to eliminate anachronisms, and to effect procedural changes required by the need for a fair and rational administration of Ontario's marriage laws. The number and variety of recommendations precludes their detailed treatment here, but mention should be made of the major proposals. With regard to the engagement to marry, it is recommended that legislation be enacted to provide that no agreement or promise to marry shall create a contract or other consensual relation between the parties, and that no action for breach of promise shall lie. The Commission has recommended that the minimum age for solemnization of marriage be 18 for males and 16 for females, and the age of free marriage, i.e., without parental consent, for both males and females should be 18. Recommendations were also made with regard to the question of parental consent required for persons under 18 but over the minimum age. Certain procedural matters were considered in relation to the solemnization of marriage, and various changes recommended.

39. The Report on Volume VI (Torts) has been presented to the Minister of Justice and Attorney General, and a description of the recommendations contained therein may be found in this Annual Report under the heading "Completed Projects".

40. The third and final instalment (Volumes IX-XIII) of the study by the research team was published in August, 1969. These volumes deal with the law relating to children, the family court and social services, separation and divorce, and the enforcement of support obligations.

41. The Commission wishes, once again, to express its gratitude to Professor Ian F. G. Baxter, the Director of the Project, and to the many persons who were associated with him during the years it has taken to bring this monumental work to its completion. Thousands of hours of devoted work have gone into the preparation of these thirteen volumes, and they reflect the highest credit upon all those persons who have assisted in their preparation.

(ii) *Law of Property Project*

42. The Commission's review of the law of property continued in five major areas during the current year.

43. The research supervisor of the landlord and tenant section, Professor M. R. Gorsky, has continued to aid the Commission in its work on this important topic. To complement its interim report of December, 1968, dealing with residential tenancies, the Commission will present a report on other aspects of the law governing the relation of landlord and tenant, including industrial and commercial leases. The Commission's aim is to recommend changes to simplify, consolidate and codify the law in this field.

44. At the Commission's request, Professor D. Mendes da Costa has prepared a comprehensive working paper on the basic principles of real property law. The Commission expects this work to be of the highest value in the course of its deliberations on reforms required for rationalization and simplification of the basic principles governing our land law.

45. Professor R. C. B. Risk continues to assist the Commission in the section on land registration. The Commission is pleased to report that the work in this area of the law of property project is well advanced. The report to the Minister is now in course of preparation and barring unforeseen difficulties will be presented in 1970. Professor R. E. Scane is currently aiding us in our study of *The Trustee Act* and associated statutes.

46. In August, 1969, Professor A. S. Weinrib was appointed to complete the work begun so ably by the late Professor J. B. Milner on community planning, development and land use control.

(iii) *The Law of Evidence*

47. The Director of the Law of Evidence Project is Dr. Alan W. Mewett, Faculty of Law, University of Toronto, and the research team includes Professor J. D. Morton, Q.C., Osgoode Hall Law School of York University, Professor Bruce C. McDonald, Faculty of Law, Queen's University, and Professor Stephen Borins, Osgoode Hall Law School of York University. Professor R. Graham Murray, Q.C., Faculty of Law, Dalhousie University, was a member of the research team until June 30, 1969.

48. A distinguished consultative committee has been formed. Its members are the Honourable G. A. Gale, Chief Justice of Ontario, the Honourable Campbell Grant, the Honourable John W. Brooke, the Honourable E. Patrick Hartt, His Honour Judge F. C. Hayes, His Honour Judge J. A. Clare, F. W. Callaghan, Q.C., Assistant Deputy Attorney General, P. DeC. Cory, Q.C., Ross G. Gray, Q.C., B. J. MacKinnon, Q.C., P. B. C. Pepper, Q.C., Julian H. Porter and J. T. Weir, Q.C.

49. Working papers have been received on Hearsay, Previous Statements, Privilege, *Res Gestae* and the Privilege Against Self-Incrimination and Compellability.

50. A meeting with the consultative committee was held on November 1, 1969, at which the first three working papers enumerated above were discussed.

(iv) *Occupiers' Liability*

51. This project was placed on the Commission's programme in June, 1969, but a decision was taken to defer work on the project for a time, and await the report on this subject by The Institute of Law Research and Reform, Province of Alberta.

52. Work has now been commenced on this project, and A. R. A. Scace, Esq., of the firm of McCarthy & McCarthy, has been appointed to make a preliminary investigation into the matter. As a basis for his research, he is studying the Report of The Institute of Law Research and Reform, Province of Alberta, on Occupiers' Liability which was published in December, 1969.

(v) *Compensation for Victims of Motor Vehicle Accidents*

53. The work on this project which was suspended for the fiscal year 1968-69 was resumed on April 1, 1969. The director of the project is Professor J. B. Dunlop.

54. The questions associated with the compensation of motor vehicle accident victims are complex and go to the heart of relations among the law of negligence, the courts and the insurance industry. In view of the fact that in 1968 there were 2,869,588 vehicles of all types on the roads of Ontario, of which 2,237,298 were passenger vehicles, the matter cannot be unimportant to the people of the province.

55. The Commission is considering the first in a series of working papers prepared by Professor Dunlop and intends with his assistance to make recommendations concerning the resolution of the problems connected with this topic.

(vi) *Section 16 of The Mortgages Act*

56. As a result of representations made to it, the Commission has initiated a study of section 16 of *The Mortgages Act*, R.S.O. 1960, c. 245. Subsection 1 of section 16 provides that where a mortgagor is to last for longer than five years, at any time after five years the mortgagor can offer to pay the principal and interest then due, with three months' further interest in lieu of notice, and that no further interest is thereafter chargeable or recoverable. Thus, at any time after five years the mortgagor may escape from the mortgage contract. Subsection 2 of section 16 exempts mortgages given by corporations from the operation of the section.

57. The Commission's prime concern with section 16 is that where an incorporated builder-developer, in order to finance construction, has given a mortgage on land upon which he intends to build a house for later sale, a private purchaser who takes an assignment of the builder-developer's mortgage is apparently barred from the right to prepay after five years. The sole reason for the bar is that the original mortgagor, the builder, is incorporated and not unincorporated.

58. A working paper dealing with all aspects of section 16 is being prepared for circulation among persons and companies who may be interested in the outcome of this study. Submissions are invited from all of those who may read the working paper.

(vii) *Emergency Medical Aid and Tort Liability*

59. As a result of representations made to it, the Commission has undertaken a study of the tort liability of persons rendering emergency medical aid to members of the public who have suffered injuries in automobile accidents or similar circumstances. The principal aim of this study is to determine whether what is popularly known as "Good Samaritan" legislation should be enacted in this province, and to establish limits of legal liability in an acceptable range of factual situations. Preliminary bibliographic and organizational work has been completed and submissions are being sought from individuals and organizations who may be interested in any possible recommended changes in the law.

LIAISON WITH OTHER LAW REFORM AGENCIES

60. As in previous years, our association with other law reform agencies has been persistent, pleasant and productive. We were delighted to be revisited by L. C. B. Gower, Esq., M.B.E., a member of the Law Commission (England and Wales) on the occasion on which he returned to Toronto to receive the degree of Doctor of Laws (Honoris Causa) from York University. We were also greatly honoured with visits to our Commission by Dr. E. J. Edwards, who represents the Law School of the University of Western Australia on the Law Reform Committee of that state; Dr. J. F. Northey, Dean of the School of Law, University of Auckland, and a member of the Public and Administrative Law Reform Committee of the New Zealand Law Revision Commission; and the Honourable E. Davie Fulton, P.C., Q.C., recently appointed Chairman of the Law Reform Commission of British Columbia.

61. The Annual Meeting of the Canadian Bar Association in the City of Ottawa provided the Commission with an opportunity to tender an informal reception and dinner to the growing number of persons directly involved in law reform both at the provincial and federal levels of government. It was a most enjoyable occasion for us and we hope only the first of a continuing series of meetings at which law reform personnel may air common problems, share experiences and exchange useful information respecting their individual programmes.

We are pleased to note that the agenda for the Fourth British Commonwealth and Empire Law Conference, New Delhi, in 1971, will provide a similar opportunity on the international level.

62. This year we have been pleased to observe the establishment of the Law Reform Commission of British Columbia. Our pleasure was somewhat tempered by the fact that our Counsel, Dr. Richard Gosse, Q.C., was persuaded to join them as one of their Commissioners. Dr. Gosse left us at the end of December, 1969 to take up his new duties in Vancouver. The Ontario Commission owes much to Dr. Gosse for his substantial contribution to its work and we wish him and his new colleagues in British Columbia every success.

63. On February 16, 1970 the Minister of Justice introduced the long awaited bill to establish the Law Reform Commission of Canada and stated that probably the first five years of the work of the Commission would be devoted to reform of the criminal law and the law of evidence

in criminal cases. We were particularly pleased to note that section 13 of Bill C-186 expressly authorizes the Canada Commission to undertake and participate in joint projects with law reform agencies in Canada or elsewhere. There are many areas where the closest possible association with the provincial law reform agencies is desirable and necessary. We note with satisfaction that the same view prevails with our federal colleagues and look forward to working with them in close co-operation.

64. We have been privileged in the past year to establish relations with the newly created Office of the Ghana Law Reform Commission and the Law Commission of Trinidad and Tobago. With respect to our relations with the latter we were honoured to have a visit from the Honourable G. A. Richards, Q.C., the former Attorney General and now Chairman of the Commission.

65. The Chairman of our Commission was invited during the course of this year to visit with groups, including members of the government, in both Manitoba and Saskatchewan, to discuss proposals for the establishment of permanent law reform agencies in these two provincial jurisdictions. We are grateful for having had these further opportunities for exchanging views on law reform with our colleagues in sister provinces.

LIAISON WITH THE LEGAL PROFESSION

66. One of the projects of the Commission most closely involving the legal profession is the section of the Law of Property Project dealing with reforms in the system of land registration. At meetings held in Ottawa, London, Niagara Falls and Toronto, we discussed with members of the profession specializing in conveyancing certain proposals formulated by our research consultant, Professor R. C. B. Risk. We wish to express our thanks and appreciation to these members of the profession for their attendance on these occasions and for their valuable comments.

67. We continue to receive from the practising profession a steady flow of most helpful suggestions concerning topics for law reform. We welcome this assistance and wish to record our thanks to all who have written.

PERSONNEL

68. Reference has already been made to the fact that Counsel to the Commission, Dr. Richard Gosse, Q.C., resigned as of December 31, 1969 to accept an appointment as one of the three Commissioners on the Law Reform Commission of British Columbia. Through the most generous co-operation of Dean R. S. Mackay, Faculty of Law, University of Western Ontario, we were able to appoint Professor Edward F. Ryan of that faculty as an immediate replacement for Dr. Gosse. Professor Ryan had worked with the Commission previously and prepared the working paper which is appended to the Commission's Report on the Protection of Privacy in Ontario. We welcome him to an even closer association with the work of the Commission.

69. When the matter of the review of Sunday Observance Legislation was referred to the Commission by the Attorney General, it was necessary to recruit additional personnel to deal with this project.

Again, and on very short notice, the Faculty of Law, University of Western Ontario, was most helpful in making Professor Ronald G. Atkey available to us as Counsel to the project. We are grateful to Professor Atkey, Dean Mackay and the University for their public spirited response to our request for aid.

CONCLUSION

70. The Commission conveys its thanks to Maureen J. Sabia and Maurice J. Coombs, our diligent and competent legal research officers, and wish to congratulate and commend the latter for having completed his qualification for the Bar of Ontario during the year. We continue to rely heavily upon the professional law teachers of this province for the major portion of our research activities. We thank them all for their devoted and scholarly contribution to the work of the Commission.

71. We are happy to acknowledge the vital role, in our activities, played by the Secretary and our loyal administrative staff. They deserve and have our special thanks.

72. A statement of the full complement of the Commission is contained in Appendix B.

73. May we also, Mr. Attorney, express to you and through you to the Deputy Attorney General and to the service personnel of the department our thanks for the splendid support we have had in all phases of our work.

All of which is respectfully submitted,

H. ALLAN LEAL,
Chairman.

JAMES C. McRUER,
Commissioner.

RICHARD A. BELL,
Commissioner.

W. GIBSON GRAY,
Commissioner.

WILLIAM R. POOLE,
Commissioner.

April 20, 1970.

APPENDIX A

REPORTS MADE BY THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Recommendations Implemented by
No. 1 The Rule Against Perpetuities	February 1, 1965	—
No. 1A Supplementary Report on the Rule Against Perpetuities	March 1, 1966	The Perpetuities Act, 1966, Stat. of Ont. 1966, c. 113
No. 2 The Wages Act; Assignment of Wages	March 3, 1965	The Wages Amendment Act, 1968, Stat. of Ont. 1968, c. 142
No. 3 Personal Property Security Legislation	March 28, 1965	—
No. 3A Supplementary Report on Personal Property Security Legislation	May 18, 1966	The Personal Property Security Act, 1967, Stat. of Ont. 1967, c. 72
The Evidence Act; Admissibility of Business Records	February 16, 1966	The Evidence Amendment Act, 1966, Stat. of Ont. 1966, c. 51, s. 1
The Mechanics' Lien Act	February 22, 1966	—
Supplementary Report on The Mechanics' Lien Act	May 26, 1967	The Mechanics' Lien Act, 1968-69, Stat. of Ont. 1968-69, c. 65
Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	—
The Execution Act: Exemption of Goods from Seizure	December 9, 1966	The Execution Amendment Act, 1967, Stat. of Ont. 1967, c. 27
The Law of Condominium	March 6, 1967	The Condominium Act, 1967, Stat. of Ont. 1967, c. 13
Basis for Compensation on Expropriation	September 21, 1967	The Expropriations Act, 1968-69
The Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968, Stat. of Ont. 1968, c. 120
Annual Report 1967	January 15, 1968	—
Certain Aspects of the Proposed Divorce Legislation contained in Bill C-187 (Can.)	January 19, 1968	The Divorce Act, Stat. of Can. 1967-68, c. 24, s. 26
The Proposed Adoption in Ontario of the Uniform Wills Act	February 5, 1968	—
The Protection of Privacy in Ontario	September 10, 1968	—

<u>Title</u>	<u>Date of Report</u>	<u>Recommendations Implemented by</u>
The Insurance Act, R.S.O. 1960, c. 190, s. 183, as amended Stat. of Ont. 1961-62, c. 63, s. 4 (commutation)	October 3, 1968	-----
Trade Sale of New Houses and the Doctrine of Caveat Emptor	October 4, 1968	-----
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	The Landlord and Tenant Amendment Act, 1968-69, Stat. of Ont. 1968-69, c. 58
Limitation of Actions	February 3, 1969	-----
Annual Report 1968	April 7, 1969	-----
The Age of Majority and Related Matters	May 12, 1969	-----
Status of Adopted Children	June 3, 1969	-----
Report on Family Law: Part I — Torts	November 4, 1969	-----
Report on section 20 of The Mortgages Act	March 12, 1970	-----
Report on Family Law: Part II — Marriage	April 6, 1970	-----

APPENDIX B

COMPLEMENT OF ONTARIO LAW REFORM COMMISSION

Chairman	H. Allan Leal, Q.C., LL.M., LL.D.
Vice-Chairman	Honourable James C. McRuer, S.M., LL.D.
Commissioners	Honourable Richard A. Bell, P.C., Q.C. W. Gibson Gray, Q.C. William R. Poole, Q.C.
Counsel	E. F. Ryan, LL.B., LL.M.
Secretary	Miss A. F. Chute
Legal Research Officers	Maurice J. Coombs, B.Sc., LL.B. Maureen J. Sabia, B.A., LL.B.
Secretary to Chairman	Mrs. S. Hlynka
Secretary to Vice-Chairman	Miss H. Chu
Secretary to Counsel	Mrs. A. E. Harrower
Project Secretary	Mrs. P. A. Black
Receptionist	Mrs. R. Wood

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FOURTH ANNUAL REPORT

1970

ONTARIO LAW REFORM COMMISSION



DEPARTMENT OF JUSTICE



ONTARIO LAW REFORM COMMISSION

FOURTH ANNUAL REPORT

1970



DEPARTMENT OF JUSTICE

The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act, 1964*, for the purpose of promoting the reform of the law and legal institutions. The Commissioners are:

H. ALLAN LEAL, Q.C., LL.M., LL.D., *Chairman*
HONOURABLE J. C. MCRUER, S.M., LL.D., D.C.L.
HONOURABLE RICHARD A. BELL, P.C., Q.C.
W. GIBSON GRAY, Q.C.
WILLIAM R. POOLE, Q.C.

Edward F. Ryan, LL.B., LL.M., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are located on the Sixteenth Floor at 18 King Street East, Toronto, Ontario, Canada.

Copies of the Reports of the Commission
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The Queen's Printer and Publisher
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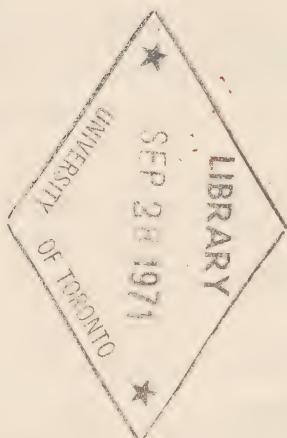


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ONTARIO LAW REFORM COMMISSION

Sixteenth Floor
18 King Street East
Toronto 210, Ontario

TO THE HONOURABLE ALLAN F. LAWRENCE, Q.C.,

MINISTER OF JUSTICE AND
ATTORNEY GENERAL FOR ONTARIO.

FOURTH ANNUAL REPORT 1970

Dear Mr. Attorney:

We have the honour to present the Fourth Annual Report of the Ontario Law Reform Commission.

INTRODUCTION

1. The Commission was established in 1964. The first general report of its activities was published in 1967 and covered the period from November, 1964 to December 31, 1967. Annual reports were submitted in 1968 and 1969. This report deals with the activities of the Commission during the fiscal year April 1, 1970 to March 31, 1971.

2. Reports on individual research projects in our programme are prepared and filed with the Minister of Justice as the work is completed. During the current year the Commission submitted the following five reports:

Family Law, Part II: Marriage
Actions Against Representatives of Deceased Persons
The Coroner System in Ontario
Sunday Observance Legislation
Land Registration

THE PROGRAMME: REFERRED MATTERS

3. Section 2 (1) (d) of *The Ontario Law Reform Commission Act, 1964* provides that it is the function of the Commission to inquire into and consider any matter relating to any subject referred to it by the Minister

of Justice and Attorney General. Two references of major projects were made to the Commission during the period covered by this report and work on a third was continued from the previous year.

(a)—Completed Projects

(i) *The Sunday Observance Legislation Project*

4. By reference dated August 15, 1969, the Commission was asked to undertake a study and review of the Sunday Observance Legislation in effect in Ontario in all of its aspects. The Commission's report dated February 26, 1971 was released by the Honourable William G. Davis, Prime Minister of Ontario, on March 11, 1971. The statement accompanying the release indicated that the Honourable Allan F. Lawrence, Minister of Justice and Attorney General, had undertaken to give the report wide distribution and all comments related to the report would be welcomed.

5. A central feature of the Commission's report is an analysis of the constitutional basis for both derivative and original provincial legislative jurisdiction in the area of Sunday legislation. This analysis shows that the province cannot prohibit Sunday activities as a matter of religious observance, and that the province is given, under the federal *Lord's Day Act*, a derivative legislative jurisdiction to permit some forms of conduct on Sunday which would otherwise be contrary to the federal law. The Commission's analysis shows, however, that the province has a substantial original jurisdiction to enact prohibitive and regulatory legislation respecting Sunday activities for purposes having no relation to the religious character of the day. The Commission was able to conclude that the Legislature of Ontario has the constitutional jurisdiction to enact a plenary scheme of Sunday laws respecting provincial fields of activity as long as the legislation is carefully drawn to achieve secular and not religious purposes. The report goes on to deal with the historical, religious and legal background of the relevant legislation, and contains a treatment of the economic background of Sunday Observance in Ontario and the findings of attitudinal and behavioural surveys conducted expressly for this project.

6. Based on this information, the report then sets out the Commission's proposals and alternatives for the establishment and preservation of a weekly pause day through controls on Sunday retail sales; commercial services, businesses and the employment of labour on Sunday; recreational, entertainment and cultural facilities on Sunday; manufacturing, production and construction on Sunday; and tourist areas. The report also covers related topics such as sabbatarian exemption; enforcement of Sunday legislation; labour standards with respect to work done on Sunday; contracts made on Sunday; and the question of legal and administrative proceedings taken on Sunday. The report with its appendices contains 471 pages and is an exhaustive treatment of these issues in this jurisdiction.

(ii) *The Coroner System in Ontario*

7. By reference dated April 27, 1970, the Commission was asked by the then Minister of Justice and Attorney General to undertake a review

of *The Coroners Act* and related matters, and to make recommendations as to what amendments, if any, should be made to the existing legislation. More particularly, the Commission was asked to consider the recommendations made on this subject by the Honourable J. C. McRuer in the Royal Commission Inquiry into Civil Rights in Ontario.

8. During the course of its deliberations, the Commission engaged in close consultation with all those directly concerned with the administration of the coroner system in Ontario. Opinions were sought with respect to changes in the existing system. In addition to the Office of the Supervising Coroner and experienced law officers within the Department of Justice, the Commission was assisted generously by the Coroners Association of Ontario and the Crown Attorneys Association.

9. The Commission has completed its work on this topic and submitted its report dated January 25, 1971.

(b)—Projects in Process

(i) Law Relating to the Sale of Goods

10. In the annual report one year ago, reference was made to a research project in the law relating to the sale of goods. This project was added to the programme of the Commission at the request of the Minister of Justice. It arose out of resolutions of the Council of the Ontario Branch of the Canadian Bar Association. At that time, the Commission was already heavily committed to other tasks. Work on the project was postponed until such time as personnel and financial resources became available.

11. The Commission opened exploratory discussions with a group of professional law teachers at York University associated with Professor Ivan R. Feltham, Q.C., Director of the Business Law Program there. These discussions led to approval by the Commission of a project within which the research team at York, commencing in May, 1971, would do a preliminary review of the law governing the sale of goods. This preliminary study would be directed towards establishing the areas in which the existing laws cause difficulty, the priorities to be allotted to specific subjects for intensive study, a comparative analysis of the experience in other jurisdictions and an indication of the lines of reform. It was anticipated that this interim report would be submitted in the early fall of 1971.

12. The following year was to have been devoted to the second phase of the research in depth on individual topics and the preparation of the final report. In total, therefore, the project would have taken two years.

13. After these decisions were taken, the Commission was informed that the experience of the Consumer Protection Bureau, Department of Financial and Commercial Affairs, revealed gross inadequacies in the law concerning warranties and guarantees and the Minister of that department had expressed the hope that the Commission might make a special project of this aspect of the law respecting sales and report separately upon it.

14. The Commission is persuaded that the problems involving warranties and guarantees are grave enough to justify attention at the earliest possible opportunity. It is equally persuaded that the study and treatment of these particular matters have important implications for the whole subject and ought to be dealt with as part of an integrated programme.

15. Accordingly, it has been settled with the consent of all parties that the Commission pursue first the problem of warranties and guarantees with a view to reporting, if possible, in the early fall of 1971.

(ii) *Administration of Ontario Courts*

16. By reference dated September 30, 1970, the Commission was requested by the Minister of Justice and Attorney General for Ontario to undertake a study and review of the administration of Ontario Courts.

17. The specific terms of reference are to undertake a study and review of the Supreme Court of Ontario, the County and District Courts, the County and District Judges' Criminal Courts, the General Sessions of the Peace and the Provincial Courts (Criminal Division); and to recommend reforms for the more convenient, economic and efficient disposal of the civil and criminal business at present dealt with by these Courts.

18. Included within these terms of reference are the following matters: study and review of the existing system; court vacation periods; work load of judges in these Courts, including their work as *persona designata* and in other judicial capacities; times of Court sittings; prompt disposition of cases; administrative backlog of cases; case loads; organization of assizes and non-jury sittings of the Supreme Court of Ontario; organization of sittings of the County and District Courts, General Sessions of the Peace, County and District Judges' Criminal Courts and the Provincial Courts (Criminal Division).

19. In order to allow individuals and groups to make their views known to the Commission, public notices inviting the presentation of opinions and briefs have been published throughout the province. In addition to the solicitation of written briefs, the Commission has arranged for public hearings, the first of which were held in Toronto at the end of March, 1971. These public hearings will be repeated in other centres if and when they are believed to be necessary or helpful.

20. The first phase of the research programme is directed towards the identification of the problem areas. In this phase the Commission will inform itself not only through written briefs and public hearings but also by conducting discussion sessions with representatives of the various groups involved at all levels in the court processes.

21. As part of this diagnostic phase, the Commission will make a demographic and transportation study for purposes of the analysis and

appraisal of the circuit system; a physical court facilities study; a statistical study aimed at accumulation and analysis of relevant data from all sources, but particularly from the daily and monthly statistical report forms recently instituted by the staff of the Systems Development Branch in the Department of Justice; a comparative research study involving the experience of a representative group of jurisdictions in the common law world; a segregated study of the Provincial Courts (Criminal Division); study of the administrative role of the crown attorney in criminal cases and, where applicable, the role of the Clerk of the Peace; and a manpower study of the legal profession to the extent that it is directly involved in the court processes.

22. For these studies the Commission is fortunate in having been able to secure the assistance of His Honour Judge Lloyd K. Graburn, County Court Judge, Judicial District of York; John W. Morden, Esq. of the Ontario Bar; and Professor Stephen Borins, Osgoode Hall Law School, York University. The Commission is also pleased to have working with it as special assistants on this project, Professor R. G. Atkey, Counsel, from the Faculty of Law, University of Western Ontario; Mrs. C. M. Creighton, Assistant Counsel, of the Ontario Bar; and Miss Angela Innes, Secretary.

THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

23. The Commission, by virtue of the provisions of section 2 of *The Ontario Law Reform Commission Act, 1964*, is empowered to initiate projects of its own motion. A substantial part of the programme of the Commission emanates from this aspect of its jurisdiction and, in the year under review, included the following matters.

(a)—Completed Projects

(i) Family Law, Part II: Marriage

24. The Annual Report 1967 contained a detailed description of the Commission's Family Law Project. The fifth volume of the Study released to the public in January, 1969, dealt with those aspects of marriage law falling within the competence of the Provincial Legislature. The Commission has completed its work on this section of the Family Law Project and reported to the Minister on April 6, 1970.

25. The Commission, in dealing with the action for breach of promise of marriage, has recommended that legislation be enacted to provide (i) that no agreement or promise to marry shall create a contract or other consensual legal relation between the parties; (ii) that should either of the parties to the engagement decide not to marry the other, no action for damages shall lie; (iii) that the right of one of the parties to recover a gift made conditional upon marriage should not be abridged or affected by reason only of the fact that the donor terminated the engagement; and (iv) that the common law governing gifts by third parties to the engaged couple in contemplation of their marriage, remain unchanged.

26. The report also contained recommendations pertaining to a number of aspects of the solemnization of marriage and particularly with regard to the age for solemnization of marriage. The matter of the age of capacity to marry falls within the legislative competence of the Parliament of Canada. No legislation has been passed by Parliament fixing the minimum age of capacity to marry. The provinces in exerting any control in this area have to rely on their jurisdiction in relation to solemnization of marriage.

27. The Commission has recommended that with respect to male persons, the minimum age for solemnization of marriage should be fixed at eighteen years; with respect to female persons at sixteen years; and that without exception, the procedures for solemnization of marriage should not be available in the Province of Ontario to any person who is below the minimum age for solemnization of marriage.

28. In addition, it was recommended that the age of free marriage, that is, without the requirement of parental consent, be fixed at eighteen years for both males and females.

(ii) *Actions Against Representatives of Deceased Persons*

29. As a result of a representation made to it by a member of the legal profession, the Commission considered certain aspects of the law of Ontario respecting actions against representatives of deceased persons which were believed to require amendment.

30. After full investigation of the particular problem and consideration of possible solutions, the Commission reported to the Minister of Justice on November 30, 1970, recommending the addition of a new section to *The Trustee Act*, R.S.O. 1960, c. 408 to provide that where a writ is issued in good faith against a party who, unknown to the plaintiff, has died prior to the issuance of the writ, the Court should have the power to validate the writ and permit its amendment to satisfy the requirements of section 38 of that Act; and the Court should have power to save the defendant's executor or administrator harmless if, unaware of the plaintiff's claim, he has distributed the estate.

(iii) *Land Registration*

31. Very soon after it was established in 1964, the Commission added to its programme an ambitious and far-ranging research project respecting the Law of Property. Reports have already been submitted on three of the ten sections, namely, Uniform Wills, Condominium, and Landlord and Tenant Law of Residential Tenancies. Another major section was devoted to the law and practice pertaining to land registration in this jurisdiction.

32. This important study has demanded a substantial amount of the Commission's time during the past three and one-half years and throughout that period has been the focus of our anxious concern. With the scholarly and indefatigable assistance of its research supervisor, Professor

R.C.B. Risk, of the Faculty of Law, University of Toronto, the Commission has completed its work and has reported on March 23, 1971.

33. The Commission has recommended the adoption of and conversion to an improved and computerized land registration system and has dealt with the essential components and principles of that system.

34. Appended to the Commission's report is a Comparative Cost Analysis of a computer system and a manual system, conducted on its behalf by Kates, Peat, Marwick & Co., Toronto. The KPM study confirms that the proposed change from a registry office system to an improved land titles system is justified on a cost-benefit basis. It further confirms that the realization of potential benefits depends on the introduction of a computerized system.

(b)—Projects in Process

(i) *Family Law Project*

35. The first instalment (Volumes I-IV) of the Family Law Study by the Commission's research team dealt with "Property Subjects", and was published in January, 1968. The Commission was aware at the outset that, in preparing its report for the Minister, the scope of this part of the Study, the sweeping nature of the recommendations for reform and the implications for the legal system would combine to make the review a difficult and lengthy task. It has been more difficult and has taken even longer than had been contemplated. It is some source of encouragement that other jurisdictions in attempting to cope with similar problems have found no easy solutions. The Commission hopes to submit its report during this fiscal year.

36. Meanwhile, additional research and writing continued during the year in preparing reports on three further subject matters in the Family Law Project, namely, Children, Jurisdiction and Recognition of Foreign Divorce Decrees, and Family Court.

(ii) *Law of Property Project*

37. Reference has already been made to the Land Registration section of the Law of Property Project. The Commission's review of the law of property continued in four other major areas during the current year.

38. The work in the Landlord and Tenant section has progressed satisfactorily and the Commission now has under consideration two further working papers. One deals with special problems referable to industrial and commercial leases. The second covers proposals for rationalization and revision of the general law governing both residential and commercial premises. The Commission continues to study the problems associated with the possible adoption of a standard form lease for use with residential premises. The difficulties of implementation have proved to be substantial and the Commission has not yet resolved them all. Professor M. R. Gorsky, Faculty of Law, Queen's University, continues to give valuable assistance as research supervisor.

39. Work continues on the research study of the basic principles of real property law under the direction of Professor D. Mendes da Costa, Faculty of Law, University of Toronto.

40. A section of the Law of Property Project is devoted to a review of the law of trusts, executors and trustees. The research in this section is under the direction of Professor R. E. Scane, Associate Dean, Faculty of Law, University of Toronto. During the course of the year, working papers were published on three subjects in this field. These working papers were reproduced and given wide circulation with an invitation to comment. The working papers and their authors were as follows:

Imperfect Trust Provisions:	Professor M. C. Cullity Osgoode Hall Law School, York University
Trustees' Powers of Investment:	Professor A. H. Oosterhoff Faculty of Law, University of Windsor
Powers of Maintenance and of Advancement:	Professor Donovan Waters Faculty of Law, McGill University

In addition, considerable research was done in the year involving unitrust, and the problems and legal doctrines concerning the determination and apportionment of capital and income as between life income beneficiaries and remaindermen. Finally, in this section, the Commission is continuing its investigation and appraisal of the existing law governing the essential principles, rights and obligations of the offices of executor and trustee.

41. The work in the section on Community Planning and Land Use Control was devoted to identifying the problems and formulating recommendations for enabling legislation to provide a legal, social and rational basis for development control at the municipal level in those areas where the planning function warrants it.

(iii) *The Law of Evidence*

42. In addition to the five referred to in the Annual Report 1969, the Commission has received working papers in this project as follows:

Credibility and Character:	Dr. Alan W. Mewett Director, Law of Evidence Project
Judicial Discretion:	Professors R. J. Delisle and Bruce C. McDonald, Faculty of Law, Queen's University
Section 36 of the Canada Evidence Act:	Dr. Alan W. Mewett
Burdens of Proof and the Canada Evidence Act in Ontario:	Professor J. Desmond Morton, Q.C. Faculty of Law, University of Toronto

43. A meeting with the consultative committee was held on October 2, 1970 when a full and profitable day was spent discussing the working papers which have been submitted.

44. During the year the Minister of Justice was pleased to recommend C. M. Powell, Esq. for appointment to serve on the committee as a representative of the Department of Justice of Ontario.

(iv) *Occupiers' Liability*

45. The Commission has completed its preliminary investigation into this matter and with the assistance of Barry A. Percival, Esq. of the Ontario Bar, is preparing its report for the Minister based on a proposed draft bill and accompanying text.

(v) *Compensation for Victims of Motor Vehicle Accidents*

46. Although in real danger of having some of its efforts overtaken by events in a very fast moving area of legislative action, the Commission has persevered chiefly because it regards the legislative action that has been taken in neighbouring jurisdictions as being too narrowly conceived. The Commission is hopeful that the next twelve months will provide the time required to complete the research and report on this important subject. The fact that others have admitted something less than satisfaction with their resolution of the problems in this area has encouraged the Commission to try and do better. The work continues under the direction of Professor J. B. Dunlop, Faculty of Law, University of Toronto.

(vi) *Section 16 of The Mortgages Act*

47. This provision of *The Mortgages Act*, R.S.O. 1960, c. 245 was intended to grant a prepayment privilege after five years to a non-corporate mortgagor on offering to pay the principal and interest then due, with three months' further interest in lieu of notice. No further interest is thereafter chargeable or recoverable.

48. Due to the change in circumstances, particularly noticeable after World War II, whereby corporate builder-developers were interposed as mortgagors in the first instance, these prepayment privileges were lost to the subsequent individual owners.

49. The Commission's concern has been to find a solution which would grant this relief without doing violence to well-established principles of legislative intervention and without jeopardizing the flow of much-needed financing to the housing industry. The Commission hopes to be able shortly to resolve these problems and to submit a report.

(vii) *Emergency Medical Aid and Tort Liability*

50. The Commission is now engaged in the preparation of its report. Anticipating the conclusion on the central issue of that report, there would appear to be no case made, on the data available, for legislative intervention. In the pursuit of law reform, it is important to appreciate

those occasions when to change the law would serve no useful purpose. The Commission believes this to be one of those occasions and rejects the invitation, too frequently proffered, of finding false Canadian social problems to fit real American legal solutions.

(viii) *The Change of Name Act*

51. On the basis of representations made to it by a member of the legal profession, the Commission has investigated the possibility for injustice due to the present basis for jurisdiction of the court under *The Change of Name Act*, R.S.O. 1960, c. 49. The Commission has completed its investigation and is preparing its report.

(ix) *The Solicitors Act*

52. A member of the practising profession has drawn the Commission's attention to a particular deficiency of *The Solicitors Act*, R.S.O. 1960, c. 378 in the area of taxation of a solicitor's costs.

53. With the enactment of *The Law Society Act, 1970*, the sections remaining in *The Solicitors Act* will be section 7 and sections 31 to 69, inclusive, dealing chiefly with solicitors' costs. The time is opportune to review this legislation and this has been undertaken with the co-operation of the Treasurer and The Law Society of Upper Canada and the assistance of L. R. MacTavish, Esq., Q.C., former Senior Legislative Counsel, and Stanley Sadinsky, Esq. of the Ontario Bar.

(x) *The Enforcement of Judgment Debts*

54. The appearance of the Payne and Anderson Reports in the United Kingdom dealing with the enforcement of judgment debts has provided the Commission with valuable comparative material for its research project in the same general area of investigation.

55. The Commission is most pleased that David E. Baird, Esq. of the Ontario Bar has responded favourably to its invitation to assist the Commission in this complicated and important corner of the law. He is eminently qualified to do so and the research work progresses.

LIAISON WITH OTHER LAW REFORM AGENCIES

56. During the course of the year, the Commission was privileged to receive visits from colleagues in other countries. The members of the Commission were most pleased that Professor P. B. Carter, Wadham College, Oxford University, was able to join them for a session on the law of evidence during his visit to the Faculty of Law, University of Toronto. In June last, the members of the Commission were happy to see again in this country the Honourable A. O. Woodhouse, Chairman of the Royal Commission Inquiry on Workmen's Compensation in New Zealand. Mr. P. M. Bakshi, Secretary, Law Commission of India, also visited the Commission in June. Last October a visit was received from Mr. G. J. F. Yuill, of the Attorney General's Department, Canberra, Australia.

Through the good offices of Mr. Yuill and Mr. C. leB. Langoulant, Senior Assistant Crown Solicitor, Perth, Australia, the Commission has received, and greatly appreciates, a copy of the List of Official Law Reform Projects in Australia and New Zealand.

57. The Commission was pleased that one of its members, the Honourable R. A. Bell, P.C., Q.C., was able to attend the Fourth Commonwealth Law Conference, Delhi. Having chaired the session on Law Reform in the Commonwealth on January 8, 1971, Mr. Bell was in a position to favour the Commission with a full report of the proceedings of the Conference on the subject of law reform. The Commission looks forward to receipt of the official proceedings containing the working papers. The Commission heartily supports the suggestion which seems to have found favour with the Conference as well, that at the next Commonwealth Law Conference it would be desirable to include a two or three day Conference of Law Reform Commissioners modelled upon the Conference of Law Ministers or the Conference of Chief Justices that take place incidental to but separate from the Commonwealth Law Conference. The Commission hopes this can be arranged and is prepared to support it in every way.

58. At the Annual Meeting of the Canadian Bar Association at Halifax, Nova Scotia, the Civil Justice Section sponsored a panel discussion on "Law Reform and Law Reform Commissions in Canada". The moderator of the panel was the Honourable Mr. Justice A. Gordon Cooper of the Supreme Court of Nova Scotia, and all the existing law reform agencies in Canada were represented, most of them by their chairmen. This forum provided yet another opportunity to stress that the role of law reform agencies is purely advisory and not legislative. In this field, as in others, misconceptions die hard.

59. On December 22, 1970, the federal Minister of Justice, the Honourable John N. Turner, P.C., Q.C., announced the appointment of the Honourable E. Patrick Hartt, of the Supreme Court of Ontario, as the first Chairman of the newly-formed Law Reform Commission of Canada. It is more than provincial pride that prompts the Commission to applaud this appointment and to wish Mr. Justice Hartt abundant success in this important post. His profound scholarship and wide experience, particularly in the criminal law field, will stand him in good stead. The Commission looks forward to the closest possible co-operation with him and his colleagues.

60. The past year has served to bring two additional provincial law reform agencies into being in the provinces of Manitoba and Prince Edward Island.

61. The Commission was privileged to have the Chairman of the Manitoba Commission, Francis C. Muldoon, Esq., Q.C., visit it shortly after his appointment. The Commission wishes Mr. Muldoon and his colleagues well and looks forward to a long and productive association with the Law Reform Commission in Manitoba.

62. The Commission also notes with pleasure, the appointment on November 25, 1970 of the Honourable John P. Nicholson, of the Supreme Court of Prince Edward Island, as first Chairman of the Law Reform Commission of P.E.I. The Commission extends to Mr. Justice Nicholson and his colleagues its congratulations and best wishes and pledges its support and co-operation.

LIAISON WITH THE LEGAL PROFESSION

63. One of the projects in the programme of the Commission directly involving the legal profession is the recent reference by the Minister of Justice and Attorney General of the investigation of the Administration of Ontario Courts. Under the sponsorship of the Civil Justice Subsection of the Ontario Branch, Canadian Bar Association, the full membership of the Commission appeared at the Annual Midwinter Meeting in Ottawa on February 5, 1971 to discuss the terms of reference of this project with the members of the practising profession and invite their suggestions on the design and conduct of the research study. The Commission is grateful to all those who attended and assisted it with their views and is grateful as well to the Canadian Bar Association for having made it possible to include this item in an already crowded programme.

64. As evidenced by references made in this report, the Commission continues to receive from the practising profession a steady flow of most helpful suggestions concerning topics for law reform. The Commission welcomes this particular form of assistance and wishes to record its thanks to all who have written.

65. The Commission is proud and privileged to be associated directly with a large number from all branches of the legal profession serving as research supervisors and singly or on its research teams, and on consultative committees. The Commission thanks them for their continued support and encouragement. Theirs is a competence and experience richly shared.

PERSONNEL

66. The Commission is pleased to announce the addition of two members to the research staff. Mrs. E. A. M. MacNab, LL.B. (Toronto) has joined its ranks as a legal research officer. Miss K. Finnegan has accepted an appointment as secretary to its legal research staff.

CONCLUSION

67. The Commission again wishes to convey its thanks to all members of its staff. Their names and positions appear as Appendix B to this report. Their loyalty and devotion to their tasks is inspirational and very much appreciated.

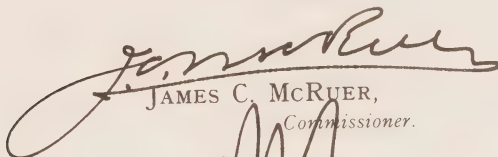
68. Members of the Commission wish to record their sense of privilege in having served the cause of law reform with your predecessor,

Honourable A. A. Wishart, Q.C., under whose aegis the Commission was established and who gave to its work constant encouragement and unfailing support. The Commission looks forward to an equally challenging role in the future and to an understanding and fruitful collaboration with you, Mr. Attorney, and with officers of your Department, in the acceleration of the pace of law reform in the province.

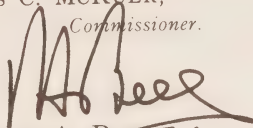
All of which is respectfully submitted,



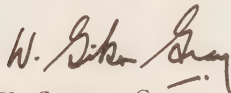
H. ALLAN LEAL,
Chairman.



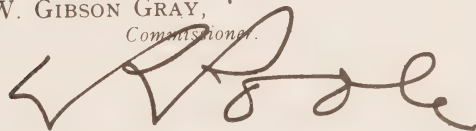
JAMES C. MCRUER,
Commissioner.



RICHARD A. BELL,
Commissioner.



W. GIBSON GRAY,
Commissioner.



WILLIAM R. POOLE,
Commissioner.

March 31, 1971

APPENDIX A

REPORTS MADE BY THE ONTARIO LAW REFORM COMMISSION

	Title	Date of Report	Recommendations Implemented by
No. 1	The Rule Against Perpetuities	February 1, 1965	—
No. 1A	Supplementary Report on the Rule Against Perpetuities	March 1, 1966	The Perpetuities Act, 1966, Stat. of Ont. 1966, c. 113
No. 2	The Wages Act; Assignment of Wages	March 3, 1965	The Wages Amendment Act, 1968, Stat. of Ont. 1968, c. 142
No. 3	Personal Property Security Legislation	March 28, 1965	—
No. 3A	Supplementary Report on Personal Property Security Legislation	May 18, 1966	The Personal Property Security Act, 1967, Stat. of Ont. 1967, c. 72
	The Evidence Act; Admissibility of Business Records	February 16, 1966	The Evidence Amendment Act, 1966, Stat. of Ont. 1966, c. 51, s. 1
	The Mechanics' Lien Act	February 22, 1966	—
	Supplementary Report on The Mechanics' Lien Act	May 26, 1967	The Mechanics' Lien Act, 1968-69, Stat. of Ont. 1968-69, c. 65
	Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	—
	The Execution Act; Exemption of Goods from Seizure	December 9, 1966	The Execution Amendment Act, 1967, Stat. of Ont. 1967, c. 27
	The Law of Condominium	March 6, 1967	The Condominium Act, 1967, Stat. of Ont. 1967, c. 13
	Basis for Compensation on Expropriation	September 21, 1967	The Expropriations Act, 1968-69
	The Limitation Period for Actions under The Sandwich Windsor and Amherstburg Railway Act, 1930	January 8, 1968	The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968, Stat. of Ont. 1968, c. 120
	Annual Report 1967	January 15, 1968	—
	Certain Aspects of the Proposed Divorce Legislation contained in Bill C-187 (Can.)	January 19, 1968	The Divorce Act, Stat. of Can. 1967-68, c. 24, s. 26
	The Proposed Adoption in Ontario of the Uniform Wills Act	February 5, 1968	—
	The Protection of Privacy in Ontario	September 10, 1968	—
	The Insurance Act, R.S.O. 1960, c. 190, s. 183, as amended Stat. of Ont. 1961-62, c. 63, s. 4 (commutation)	October 3, 1968	—

Title	Date of Report	Recommendations Implemented by
Trade Sale of New Houses and the Doctrine of Caveat Emptor	October 4, 1968	—
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	The Landlord and Tenant Amendment Act, 1968-69, Stat. of Ont. 1968-69, c. 58
Limitation of Actions	February 3, 1969	—
Annual Report 1968	April 7, 1969	—
The Age of Majority and Related Matters	May 12, 1969	—
Status of Adopted Children	June 3, 1969	The Child Welfare Amendment Act, 1970, Stat. of Ont. 1970, c. 96, s. 23
Report on Family Law: Part I —Torts	November 4, 1969	—
Report on section 20 of The Mortgages Act	March 12, 1970	The Mortgages Amendment Act, 1970, Stat. of Ont. 1970, c. 54, s. 1
Report on Family Law: Part II —Marriage	April 6, 1970	—
Report on Actions Against Representatives of Deceased Persons	November 30, 1970	—
The Coroner System in Ontario	January 25, 1971	—
Sunday Observance Legislation	February 26, 1971	—
Land Registration	March 23, 1971	—

APPENDIX B

OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

Chairman	H. Allan Leal, Q.C., LL.M., LL.D.
Vice-Chairman	Honourable James C. McRuer, S.M., LL.D., D.C.L.
Commissioners	Honourable Richard A. Bell, P.C., Q.C. W. Gibson Gray, Q.C. William R. Poole, Q.C.
Counsel	E. F. Ryan, LL.B., LL.M.
Secretary	Miss A. F. Chute
Legal Research Officers	Maurice J. Coombs, B.Sc., LL.B., LL.M. Maureen J. Sabia, B.A., LL.B. Elizabeth A. M. MacNab, LL.B.
Secretary to Chairman	Mrs. S. Hlynka
Secretary to Vice-Chairman	Miss H. Chu
Secretary to Counsel	Mrs. A. E. Harrower
Project Secretary	Miss Angela Innes, B.A.
Secretary to Legal Research Officers	Miss K. Finnegan
Receptionist	Mrs. R. Wood

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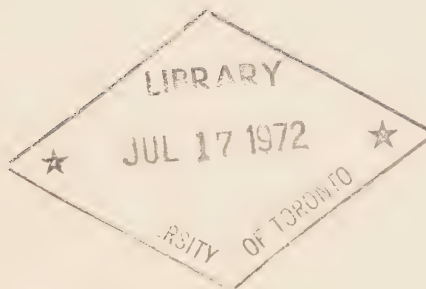


Government
Publication

FIFTH ANNUAL REPORT

1971

ONTARIO LAW REFORM COMMISSION



DEPARTMENT OF JUSTICE



ONTARIO LAW REFORM COMMISSION

FIFTH ANNUAL REPORT

1971



DEPARTMENT OF JUSTICE

The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act* for the purpose of promoting the reform of the law and legal institutions. The Commissioners are:

H. ALLAN LEAL, Q.C., LL.M., LL.D., *Chairman*

HONOURABLE J. C. MCRUER, S.M., LL.D., D.C.L.

HONOURABLE RICHARD A. BELL, P.C., Q.C.

W. GIBSON GRAY, Q.C.

WILLIAM R. POOLE, Q.C.

Edward F. Ryan, LL.B., LL.M., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are located on the Sixteenth Floor at 18 King Street East, Toronto, Ontario, Canada.

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ONTARIO LAW REFORM COMMISSION

Sixteenth Floor
18 King Street East
Toronto 210, Ontario

TO THE HONOURABLE DALTON A. BALES, Q.C.,

MINISTER OF JUSTICE AND
ATTORNEY GENERAL FOR ONTARIO.

FIFTH ANNUAL REPORT 1971

Dear Mr. Attorney:

We have the honour to present the Fifth Annual Report of the Ontario Law Reform Commission.

INTRODUCTION

1. The Commission was established in 1964. The first general report of its activities was published in 1967 and covered the period from November, 1964 to December 31, 1967. Annual reports were submitted for 1968, 1969 and 1970. This report deals with the activities of the Commission during the fiscal year April 1, 1971 to March 31, 1972.

2. Reports on individual research projects in our programme are prepared and filed with the Minister of Justice and Attorney General as the work is completed. During the current year the Commission submitted the following seven reports:

The Change of Name Act
Section 16, The Mortgages Act
Development Control
Powers of Attorney
Occupiers' Liability
Consumer Warranties and Guarantees in the Sale of Goods
Review of Part IV of The Landlord and Tenant Act

THE PROGRAMME: REFERRED MATTERS

3. Section 2 (a) (d) of *The Ontario Law Reform Commission Act* provides that it is the function of the Commission to inquire into and consider any matter relating to any subject referred to it by the Minister of Justice and Attorney General. One new matter was referred to the Commission during the period covered by this report. Reports were completed on two projects in the programme of referred matters and work continues on two others.

(a)—Completed Projects

(i) *Consumer Warranties and Guarantees in the Sale of Goods*

4. As stated in our last Annual Report, the experience of the Consumer Protection Bureau of the Department of Financial and Commercial Affairs revealed serious inadequacies in certain aspects of the law governing the sale of goods in the consumer market. As a result, the Commission's research timetable for its study of the law relating to the Sale of Goods was extensively revised, with priority being given to a Report on Consumer Warranties and Guarantees.

5. We were fortunate to be able to engage the services of three highly qualified legal scholars from the Osgoode Hall Law School of York University who were willing, at short notice, to devote their time and ample abilities to the accomplishment of the extensive studies required for this project. Professor Jacob S. Ziegel, the head of the Research Team, and his two associates, Professors Peter A. Cumming and W. A. W. Neilson, produced a six-volume set of working papers covering the whole range of theoretical and practical problems that are subsumed in this topic. Their work was thoroughly documented through field studies, interviews with provincial and federal consumer protection officials, examination of the law and experience in many other Canadian and foreign jurisdictions, and analyses of the work of other legal scholars and researchers.

6. The Research Team's conclusion that substantial reform is required in the law relating to consumer warranties and guarantees was supported by a great deal of original source material illustrating the actual experience of consumers in Ontario. We join with the Research Team in extending our appreciation to the officers of the Consumer Protection Division of the Department of Financial and Commercial Affairs for Ontario for their assistance and co-operation in the empirical studies carried out in this project.

7. In its Report on Consumer Warranties and Guarantees in the Sale of Goods, the Commission recommends that there be enacted a new *Consumer Products Warranties Act* prescribing reasonable warranty standards in consumer sales. It is recommended that these standards, unlike those now found in *The Sale of Goods Act*, R.S.O. 1970, c. 421, should not be capable of being disclaimed or avoided by those who manufacture or sell in the consumer market.

8. Substantial modifications in the law respecting parol evidence and privity of contract are recommended in order to extend the protection of the law to cover situations in which many persons are now without power to seek redress, and to bring home the necessity for fair and responsible dealing to all persons who are engaged in the production, distribution and sales phases of a consumer transaction. These reforms to the substantive law that are contained in the proposed *Consumer Products Warranties Act* are to operate only in the area of consumer sales. *The Sale of Goods Act* will continue to be the basic code of sales principles in all non-consumer transactions, and in those aspects of consumer sales that are not related to warranties.

9. The Commission's Report on Consumer Warranties and Guarantees in the Sale of Goods also contains recommendations for the strengthening of Ontario's consumer protection programme. Compliance with the proposed *Consumer Products Warranties Act* will be ensured not only through the creation of new dispute-settling machinery under the Consumer Protection Bureau but also through conferring new enforcement powers on the Bureau and additional jurisdiction on the Commercial Registration Appeal Tribunal of the Department of Financial and Commercial Affairs. In addition, the Report contains proposals for the settling of disputed or unclear issues arising under the proposed Act by means of a power of referral to a judge of the Supreme Court or to the Court of Appeal.

10. Apart from matters of general principle applying to most consumer transactions, the Research Team examined some of the particular problems involved in the sale of used motor vehicles. As a result of their research, the Commission was able to conclude that there is a close connection between motor vehicle safety and motor vehicle warranties. It was apparent that the existing machinery for the inspection and mechanical fitness certification of used vehicles under *The Highway Traffic Act*, R.S.O. 1970, c. 202, could and should be strengthened in the interest of both public safety and consumer protection. The Commission therefore recommended legislation requiring the selling dealer to warrant that a used vehicle is in the mechanical condition attested to by the inspection certificate that he furnishes to the buyer at the time of sale. In addition, it was recommended that a cause of action in tort be created to give full opportunity for redress to any person injured as a result of false, careless or negligent certification, and to help ensure that proper care is in fact exercised by those who conduct or supervise the inspection of the motor vehicle.

11. The Commission wishes to express its gratitude to the Research Team for the high degree of professional competence and analytical skill that went into developing a proposed programme designed to create a substantial improvement in the quality, durability and safety of consumer products manufactured or sold in Ontario.

(ii) *Review of Part IV of The Landlord and Tenant Act*

12. During the course of this year the Attorney General requested the Commission to review certain aspects of Part IV of *The Landlord and Tenant Act*, R.S.O. 1970, c. 236 which was enacted to implement the

recommendations contained in the Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies. The legislation has been in effect since January 1, 1970.

13. Representations made to the Attorney General and to this Commission fall mainly under six headings and concern six sections of the Act: (1) procedure for termination of tenancies and recovery of possession (section 106); (2) provisions concerning security deposits (section 85); (3) the respective obligations of landlords and tenants with respect to repairs and maintenance of the premises and the enforcement thereof (section 96); (4) the respective rights of the parties to enforcement of covenants generally (section 89); (5) the abuse of the processes of the courts concerning some penal provisions of the Act (section 108); and (6) the requirements to post up the provisions of sections 98 to 103 and 109 of the Act where a landlord rents more than one residential premises in the same building and retains possession of part for use of all tenants in common (section 104).

14. The Commission reviewed these matters and submitted its report with recommendations at the end of the year.

(b)—Projects in Process

(i) *Law Relating to the Sale of Goods*

15. Work on this project was deferred until the completion of the Commission's Report on Consumer Warranties and Guarantees in the Sale of Goods, and was not resumed until March, 1972. We have again been fortunate to secure the services of Professor Jacob S. Ziegel of the Osgoode Hall Law School of York University who will act as project director, and who will supervise the research and prepare the necessary working papers for the Commission's consideration.

16. This project will be concerned with general sales principles and will not be limited to sales of a particular type nor to commercial or consumer sales. Particular emphasis will be placed upon current marketing and general commercial practices, and the extent to which the existing *Sale of Goods Act*, essentially unchanged for over half a century, meets present mercantile needs. The project will include import and export sales transactions and such closely related questions as warehousing, shipping problems and payment systems, so far as these questions fall within provincial jurisdiction. The project will also embrace the study of some important contract principles, including offer and acceptance, consideration, and mistake, which have proved particularly troublesome in the sales area. Altogether it is expected that some 23 separate topics will form the substance of the study. The project is one of substantial dimensions and we anticipate that it will take two to three years to complete.

17. Attention is invited to the Commission's Third and Fourth Annual Reports, where the full background and some further details of this project are set out.

(ii) *Administration of Ontario Courts*

18. The Fourth Annual Report contains a detailed description of the Commission's Administration of Ontario Courts Project which was initiated by reference dated September 30, 1970.

19. Following the receipt of written briefs and the holding of public hearings in Toronto on March 29 and March 30, 1971, the Commission conducted a series of discussion sessions in 12 Ontario cities with members of the judiciary, the legal profession and court personnel. In addition, the Commission distributed comprehensive questionnaires on various topics to selected individuals and groups to elicit information and opinions on the organization and administration of specific services. The day to day operations of the Provincial Courts (Criminal Division) throughout the province were observed by research assistants retained by the Commission and statistics compiled of the caseloads of all levels of courts.

20. Members of the Commission met with officials of the Federal Judicial Center in Washington, D.C. and witnessed a seminar for newly appointed United States Federal District Court Judges. On the same visit the Commission met with representatives of the Institute for Court Management, Denver, Colorado.

21. Studies on topics in addition to those described in our Fourth Annual Report were commenced, including research on the Small Claims Courts, pre-trial procedures, the jury system and law reporting. For these studies the Commission is fortunate in having been able to secure the assistance of Professors S. N. Lederman, George W. Adams and Garrick D. Watson of the Osgoode Hall Law School of York University, and Mr. Harvey J. Bliss of the Ontario Bar.

22. The Commission enjoyed excellent co-operation from those invited to participate in its discussions and research programme and owes a particular debt of gratitude to the Planning Branch of the Department of Public Works, the Management Services Division of the Treasury Board and the Systems Development Branch of the Department of Justice.

23. The organization and management of the research design for this project has proved to be a difficult and exacting task. Under the able leadership of Professor Ronald G. Atkey, of the Osgoode Hall Law School of York University, Counsel to the Administration of Ontario Courts Project, and Carol M. Creighton, Assistant Counsel, substantial progress has been made during the past year. We anticipate completion of this work during the latter portion of 1972.

THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

(a)—Completed Projects

(i) *The Change of Name Act*

24. In response to representations made to the Commission, a study was undertaken of certain jurisdictional and discriminatory aspects of *The Change of Name Act*, R.S.O. 1960, c. 49, as amended, now R.S.O.

1970, c. 60. This Act allows only persons who are British subjects to apply for a change of name, and also imposes certain limitations upon the ability of a married woman to change her name which do not apply to single women nor to men, married or single.

25. After consideration of the nationality problem, the Commission recommended that the British subject provisions be dropped and that the court's jurisdiction to hear an application under the Act be made to depend upon the fact of ordinary residence within Ontario for a period of one year.

26. In addition, the Commission concluded that the present disparity between the rights of married men and married women to apply under the Act cannot be justified. It was accordingly recommended that the rights of married women under the Act should be assimilated to those of married men, so that both would be treated the same in the matter of an application for a change of name.

(ii) *Section 16 of The Mortgages Act*

27. This section of *The Mortgages Act*, R.S.O. 1960, c. 245, now section 17, R.S.O. 1970, c. 279, was intended to grant a prepayment privilege after five years to a non-corporate mortgagor on offering to pay the principal and interest then due, together with three months' further interest in lieu of notice. Once such a tender has been made, no further interest is due or payable under the mortgage. Since to refuse to accept the offer would be uneconomic for the mortgagee, in reality a mortgagor can pay off the debt owing at any time after five years.

28. Two primary difficulties were identified in this section. First, it does not confer a clear right to a discharge, but only a means of terminating the payment of interest. Second, a great many mortgages on private dwellings are today given by an incorporated builder-vendor. Neither this person nor his successors in title — the persons who buy the homes he has built — can exercise any prepayment rights under the section.

29. With respect to the prepayment problem, the Commission recommended that the Act should confer upon the non-corporate mortgagor the right to demand a discharge of the mortgage rather than the right that interest should cease. Regarding the problem where the mortgagor is a successor in title to an incorporated builder-vendor who originally gave the mortgage, the Commission recommended that a subsection be added specifically allowing the statutory right to prepayment where the mortgagor at the time is a natural person and the mortgage covers a dwelling-house or a dwelling-unit in a multi-unit structure.

30. Most mortgage loans made today by institutional lenders are for a five-year term, but are amortized over a much longer period. This makes the loan renegotiable every five years, and raises the question as to whether the agreement at the end of five years creates a new mortgage, which would not be subject to the prepayment provisions described above. The Commission therefore recommended that these

provisions apply to the mortgage or to any renewal or extension thereof, or to any replacement thereof through a mortgage taken or held by the same mortgagee.

31. In addition to these proposals, it was recommended that the words "in lieu of notice" be deleted from the section since they are misleading, that no contracting out of statutory rights conferred by the section be allowed, and that the provisions of the revised section be applied to existing mortgages as well as to mortgages created after the legislation comes into effect.

(iii) *Development Control*

32. In this report the Commission reviewed and analyzed some of the problems faced by municipalities in controlling the use of land. It was apparent that the control of land use is becoming more difficult as population densities grow, and that the common law and some of the existing legislative schemes are falling behind contemporary needs in this increasingly complex area. Many municipalities have been forced to resort to practices of questionable efficacy and legal validity because the tools available to them — primarily zoning by-laws — are not sophisticated enough to serve properly the public interest.

33. The Commission gave serious consideration to the question of whether a separate development control power should be granted to municipalities. This would, however, have caused the introduction of a third level of land use control in addition to the existing levels of the official plan and zoning by-laws. Consideration of the intricate physical, social, legal and economic dimensions of the problem caused the Commission to conclude that it would be neither desirable nor practical to make any major changes with respect to overall development control, nor with respect to the possible creation of a third level of regulation, until such time as the basic political and philosophical problems are analyzed and resolved. We therefore confined our recommendations to a narrower range of practices that have grown up or appear to be necessary under the existing scheme of legislation, which may be implemented pending the overall review.

34. While the details of the Commission's recommendations are complex, the following summary will indicate in a general way the scope of the problems covered: demands upon highways caused by intensive new land use; regulation of access to public highways; controls over surfacing of parking areas and driveways; snow removal; grading of lands to control water run-off; easements; floodlighting control; landscaping and external amenities; disposal of refuse; and site plans.

35. As set out in our report, these recommended special powers of control would be uniform but would be granted only to municipalities where change is likely to take place and where competent professional planning personnel and procedures are available. The vehicle recommended for the granting of these powers is *The Planning Act*, R.S.O. 1970, c. 349. The present powers of review and control exercised by the Ontario Municipal Board would therefore be capable of being exercised in relation to these special powers.

36. The Commission wishes to extend its appreciation to D. R. Steele, Esq., Q.C., of the Toronto Bar, for his generous and able assistance in the task of preparing this report.

(iv) *Powers of Attorney*

37. As a result of representations made to it, the Commission initiated a study concerning certain aspects of the law relating to powers of attorney. The Commission was chiefly concerned with the effect of the donor's subsequent mental incapacity on a power of attorney, and the effect on it of the donor's death.

38. The matter was investigated in detail, and after due consultation and consideration the Commission submitted a report recommending repeal of *The Powers of Attorney Act*, R.S.O. 1970, c. 357 and enactment of a new *Powers of Attorney Act* which would

- (a) allow a donor of a power of attorney to provide expressly for the power to survive his subsequent incapacity (subject to certain conditions to be set out in the new Act);
- (b) provide that a power of attorney should cease to be valid on the death of the donor of the power; and
- (c) provide that in a proper case, the surrogate court should be empowered, on application, to appoint an attorney to act on behalf of a person who is incapacitated, but who has not executed a power of attorney, for limited and specific purposes.

39. The Commission included in its report a draft bill, and recommended a simple form of power of attorney which might be used in place of the usual stationer's forms.

(v) *Occupiers' Liability*

40. The law of occupiers' liability has long been subject to uncertain and anachronistic doctrines, almost entirely unaffected by the major developments in tort concepts of the twentieth century. The Commission therefore undertook the task of modernizing this distinct and significant body of law in order to free it from the preoccupation with the sanctity of real property rights and clumsy legal fictions.

41. In its report, the Commission recommended the enactment of an *Occupiers' Liability Act*, a draft of which was included, which would operate in place of the common law rules prescribing the care that an occupier is required to show towards persons and their property that may be on his premises. The proposed Act requires an occupier to take such care as is reasonable in all the circumstances to see that a person entering his premises, and his property, will be reasonably safe in using the premises for the purposes contemplated by the occupier. The uniform duty of care is owed to all persons, and the proposed Act does away with the common law categories of "invitee", "licensee" and "trespasser".

42. The proposed Act also deals with the liability of the independent contractor, contributory negligence by an injured person, and

the special problems of landlord and tenant, master and servant, inn-keepers, bailees and common carriers. The proposed Act would bind the Crown.

43. The Research Supervisor for this project was Mr. Barry A. Percival, of the Toronto Bar. His abilities and insight were of great value throughout the course of the project.

44. We also wish to acknowledge the assistance to us that was provided by the 1969 Report on Occupiers' Liability of the Institute of Law Research and Reform of Alberta.

(vi) *Emergency Medical Aid and Tort Liability*

45. As a result of representations made to it, the Commission initiated a study of emergency medical aid and tort liability. Concern was expressed that medical and paramedical personnel rendering assistance and treatment to injured people might be held liable for acts undertaken to relieve suffering. Questions were also raised as to clarifying the standard of care required of those rendering emergency medical aid and whether reasonable immunity from lawsuits should be afforded in appropriate cases, in order to encourage competent people to assist at accidents.

46. In its Fourth Annual Report, the Commission stated that "there would appear to be no case made, on the data available, for legislative intervention". After having given this matter our further fullest consideration, we have concluded that change in the law is neither necessary nor desirable, and as a result we have completed our work on this project.

(b)—Projects in Process

(i) *Family Law Project*

47. A detailed description of the wide scope of this project and progress to date is contained in the previous Annual Reports of the Commission. Work continued during the past year on four major family law areas.

48. Substantial headway was made on the area of property questions in the marriage relationship, including the settling of most of the details of the equalizing claim proposal of the Research Team of the Family Law Project. Property questions and the law relating to financial responsibilities in marriage formed the subject matter of four volumes of the Study prepared for the Commission by the Research Team, and are interwoven with the topics dealt with in most of the other nine volumes. The Commission has found this to be a difficult area, but expects to be able to report during the coming year.

49. As part of its Family Law Study, the Research Team of the Family Law Project considered the question of Ontario's Family Courts, and Volume X of the Study made recommendations for their reform. The Commission is engaged at present in studying the Research Team's

suggestions and in preparing its report. Chief among the areas of concern are the jurisdiction of the Family Court, the Court's structure and its place in the hierarchy of courts in Ontario, the support services necessary for its proper functioning, and the training of its judges. The Commission hopes to submit its report during 1972.

50. There have been substantial developments both in Ontario and in other jurisdictions in the law relating to children since the publication of the Family Law Study in 1968. For this reason there has been a need for additional research. The Commission has, however, taken a number of important decisions concerning its final recommendations to be included in the Report on Children, which will be submitted during the coming year. It will encompass recommendations on the law of custody and guardianship, adoption, children in need of care and protection, children born outside marriage and the representation of the interests of children in legal proceedings.

51. Research and writing on Jurisdiction and Recognition of Foreign Divorce Decrees is continuing. The final studies on Support Obligations and Separation and Divorce, the completion of which will conclude the Family Law Project, remain to be undertaken by the Commission.

(ii) *Law of Property Project*

52. Work continued during the year in the Landlord and Tenant section of this project in three main areas: special problems referable to industrial and commercial leases; the proposals for rationalization and revision of the general law governing both residential and commercial premises; and the consideration of proposals for the adoption of a standard form lease for use with residential premises. With respect to the latter topic, our research supervisor, Professor Morley R. Gorsky, prepared a substantial working paper which has been given wide circulation and comment has been invited. An initial draft of the Commission's report on the first two topics has been completed and we contemplate submitting the final report early in the new fiscal year.

53. The year saw continued progress in the research programme and the preparation of working papers in the law of trusts. The Commission circulated and invited comment on a working paper prepared by Professor Donovan W. M. Waters on Restraints on Anticipation and on Alienation.

54. Reference has already been made to the fact that the Commission, during the year, completed its work and submitted its Report on Development Control. As was stated in that Report, the breadth of the issues in the larger field of Community Planning and Land Use Control involve fundamental operations of the social and economic structures in Ontario and must, of necessity, involve studies and advice from professional planners, architects, economists, sociologists, and persons engaged in municipal affairs, as well as lawyers. We were forced to conclude that the research scheme would have to be much more comprehensive than that designed by the late Professor J. B. Milner and which was the basis upon which the Commission decided to under-

take the study of this complex area. It is a cause for regret that lack of experienced and knowledgeable personnel precludes us from pursuing our original plan to deal with the wider topics in this field.

55. The Commission is reviewing the law in Ontario as contained in *The Mortmain and Charitable Uses Act*, R.S.O. 1970, c. 280, governing the holding of land by corporations and charitable organizations. The requirement that a corporation not hold land except under the authority of a licence in mortmain or of a statute will be examined in the light of modern economic conditions. The Commission will also consider restrictions existing under present law with respect to the holding of land by charitable organizations, such as the requirement that land not required for actual occupation for the purpose of the charity be sold within two years of the date of acquisition of the land by the charity. The purpose and rationale of these restrictions upon corporations and charities will be examined with a view to ascertaining whether and to what extent such restrictions are still justified in Ontario.

(iii) *Law of Evidence*

56. Work continued during the year on the Law of Evidence Project. Working papers were received from the Research Team, which is under the direction of Dr. Alan W. Mewett, of the Faculty of Law, University of Toronto, on the following topics:

Statutory Proposals:	Professor J. Desmond Morton, Q.C. Faculty of Law, University of Toronto
Illegally Obtained Evidence:	Dr. Alan W. Mewett Faculty of Law, University of Toronto
Opinion Rule and Expert Evidence:	Professor R. J. Delisle Faculty of Law, Queen's University
Executive Secrecy:	Bruce C. McDonald, Esq. of the Ontario Bar
Competence and Compellability:	Bruce C. McDonald, Esq. of the Ontario Bar
Corroboration:	Dr. Alan W. Mewett Faculty of Law, University of Toronto

57. These formal scholarly documents have been supplemented from time to time by helpful memoranda and research notes furnished to the Commission by the Research Team, and by consultation with Dr. Mewett and his associates, each of whom has shared his time and expertise with us in a manner which is both gratifying and appreciated.

58. During the year, the Commission moved into the stage of legislative drafting in this project, with a view to embodying its proposals in draft statute. This phase of the project is being carried out by L. R. MacTavish, Esq., Q.C., the distinguished former Senior Legislative Counsel in Ontario.

(iv) *The Solicitors Act*

59. With the enactment of *The Law Society Act, 1970*, Stat. of Ont. 1970, c. 19, a number of sections were removed into that Act from *The Solicitors Act*, R.S.O. 1960, c. 378. A year ago, the Commission undertook a review of the remaining sections, dealing chiefly with solicitors' costs. During the year, our Research Supervisor, Stanley Sadinsky, Esq. of the Ontario Bar, took a post with the Faculty of Law, Queen's University. The result has been that the work on this project has been somewhat delayed. We anticipate that it will be completed by September, 1972.

(v) *The Enforcement of Judgment Debts*

60. Work on this project continues under the able direction of David E. Baird, Esq. of the Ontario Bar.

(vi) *Non-Possessory Repairman's Lien*

61. On the basis of representations made to us, the Commission is investigating possible inadequacies in the present law governing the lien acquired by the repairman of a chattel for work performed by him upon that chattel.

62. Under the present law, the lien acquired by a repairman is lost if possession of the chattel is given up. The Commission is considering the effect of the law as it now stands on repairmen and owners of chattels and is considering the desirability of providing for a non-possessory lien, whereby persons such as automobile mechanics would be able to preserve their rights against the chattel by registering a claim for a lien rather than having to rely on possession to enforce their rights.

(vii) *Compensation for Victims of Motor Vehicle Accidents*

63. A number of basic decisions have been taken in this project during the year, although progress was delayed because of the absence during part of the year of the Commission's Project Director, Professor J. B. Dunlop, Faculty of Law, University of Toronto, on sabbatical leave. We expect to begin the drafting of our report during the summer of 1972.

LIAISON WITH OTHER LAW REFORM AGENCIES

64. At the end of April, 1971, the Chairman of the Ontario Commission attended by invitation and delivered a paper on Methods of Law Reform in Canada at a Conference on Methods of Law Reform in the Commonwealth held under the auspices of the British Institute of International and Comparative Law at Cumberland Lodge, Great Windsor Park, England. In addition to the Right Honourable Lord Denning, Master of the Rolls and the Right Honourable Lord Cross, Lord of Appeal in Ordinary, representatives were present from the English Law Commission, the Scottish Law Commission, the Office of Law Reform,

Northern Ireland, the Queensland Law Reform Commission, the New South Wales Law Reform Commission, the Law Commission of India, the Law Reform Committee of Jamaica and from other jurisdictions without any formally constituted law reform agencies. It was a privilege meeting with associates in common endeavours from other jurisdictions. The Conference provided the opportunity for a fruitful exchange of experience and views on the topic of comparative methodology in law reform. Being in England also provided the Chairman with the invitation, happily accepted, to attend a joint meeting of the English and Scottish Law Commissions at All Souls, Oxford.

65. The past year has served to bring into being law reform agencies in the Provinces of Saskatchewan and Newfoundland and Labrador. The formal structure for law reform has now been laid down in all provinces of Canada and at the federal level. Recently the announcement was made that the Province of Nova Scotia had appointed ten members to its Law Reform Advisory Commission.

66. In March, 1972 the Ontario Commission was pleased to send representatives to a joint meeting in Ottawa of the provincial and federal law reform agencies convened by the Law Reform Commission of Canada to discuss methods of co-operation and collaboration in areas of mutual concern.

67. The Conference of Commissioners on the Uniformity of Legislation in Canada has adopted the principle of representation on the Conference of law reform agency personnel. For some provinces this was achieved without sending additional personnel since membership in the two bodies frequently overlapped. The Annual Meeting of the Conference in August, 1971 reflected the application of the principle in its extended form and the scope and nature of the deliberations affirmed the wisdom of the decision.

68. During the year we were privileged to maintain close relations with a number of law reform agencies throughout the world, particularly those in the British Commonwealth, and benefited greatly from their assistance and co-operation. We appreciate their good offices. We were honoured to receive visits from Mr. P. Raymund Smith, a member of the Law Reform Commission, Brisbane, Queensland, and Mrs. Smith; the Honourable Mr. Justice W. B. Campbell, Chairman of the Law Reform Commission, Queensland, and Mrs. Campbell; the Honourable Mr. Justice Raymond George Reynolds, Chairman of the Law Reform Commission, New South Wales, and Mrs. Reynolds; and the Honourable Mr. Justice Cecil Kelsick, Chairman of the Law Reform Commission of Trinidad and Tobago.

69. We also wish to express our appreciation to the following distinguished visitors to the Commission who gave freely of their time and experience to discuss with us particular projects on our programme: Sir Richard Wild, Chief Justice of New Zealand; the Right Honourable Sir Edmund Davies, P.C., LL.D., Lord Justice of Appeal, England; and I. H. Jacob, Master of the Supreme Court, England.

LIAISON WITH THE LEGAL PROFESSION

70. At the Annual Meeting of the Canadian Bar Association in 1971, the membership of the Ontario Branch approved the decision of Council that the Chairman, from time to time, of the Ontario Law Reform Commission be a member of Council. The Commission appreciates this gracious gesture and at the same time welcomes the opportunity for closer liaison and collaboration with the Ontario Branch, Canadian Bar Association, in the area of law reform.

71. During the year the Commission was pleased to receive a visit from John L. Farris, Esq., Q.C., President of the Canadian Bar Association. We are happy to report that as a result of this visit arrangements have been made for an even closer liaison between our Commission and the national office of the Association. We are indebted to Mr. Farris for his overtures and his helpful assistance in this regard.

72. At all stages of its work, and on both a formal and an informal plane, the Commission has been greatly assisted by the informed, thoughtful and constructive support of the legal profession. An examination of the programme described above will show how many of our projects originated from suggestions from members of the practising bar, or were only completed with their assistance and advice. Many law students have participated in our work as well, assisting with the basic research and field work which is absolutely essential to the preparation of a Commission report. Finally, the Commission wishes to acknowledge its debt to the academic lawyers from the various Ontario law schools, whose devotion to the pursuit of excellence in legal scholarship has been reflected again and again in the working papers and research studies that they have prepared for us. To all we express our appreciation, and extend again the invitation to join with us in the years ahead in the continuing work of law reform.

PERSONNEL

73. The Commission is pleased to announce the addition of two new Research Officers. Mr. Keith B. Farquhar, LL.B., LL.M. (Hons.), LL.M. came to us from the Faculty of Law, University of Western Ontario, and Mr. John F. Layton, M.A., LL.B. joined us from the Bar Admission Course. Leaving during the year were Mrs. E. A. M. MacNab, LL.B. and Mr. Maurice J. Coombs, B.Sc., LL.B., LL.M. We wish Mrs. MacNab and Mr. Coombs well in their new endeavours.

CONCLUSION

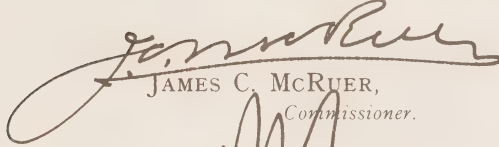
74. The Commission again wishes to convey its thanks to all members of its staff. Their names and positions appear as Appendix B to this report. Their loyalty and devotion to their tasks is both gratifying and very much appreciated.

75. To you, Mr. Attorney, to your predecessor, the Honourable Allan F. Lawrence, Q.C., and to the officers of your Department, we express our thanks for the past support and assistance that have been furnished to us. We look forward to a year of further progress and co-operation.

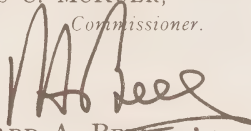
All of which is respectfully submitted,



H. ALLAN LEAL,
Chairman.



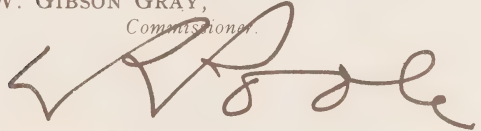
JAMES C. McRUER,
Commissioner.



RICHARD A. BELL,
Commissioner.



W. GIBSON GRAY,
Commissioner.



WILLIAM R. POOLE,
Commissioner.

March 31, 1972

APPENDIX A

REPORTS MADE BY THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Recommendations Implemented by
No. 1 The Rule Against Perpetuities	February 1, 1965	—
No. 1A Supplementary Report on the Rule Against Perpetuities	March 1, 1966	The Perpetuities Act, 1966, Stat. of Ont. 1966, c. 113
No. 2 The Wages Act; Assignment of Wages	March 3, 1965	The Wages Amendment Act, 1968, Stat. of Ont. 1968, c. 142
No. 3 Personal Property Security Legislation	March 28, 1965	—
No. 3A Supplementary Report on Personal Property Security Legislation	May 18, 1966	The Personal Property Security Act, 1967, Stat. of Ont. 1967, c. 72
The Evidence Act, Admissibility of Business Records	February 16, 1966	The Evidence Amendment Act, 1966, Stat. of Ont. 1966, c. 51, s. 1
The Mechanics' Lien Act	February 22, 1966	—
Supplementary Report on The Mechanics' Lien Act	May 26, 1967	The Mechanics' Lien Act, 1968-69, Stat. of Ont. 1968-69, c. 65
Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	—
The Execution Act: Exemption of Goods from Seizure	December 9, 1966	The Execution Amendment Act, 1967, Stat. of Ont. 1967, c. 27
The Law of Condominium	March 6, 1967	The Condominium Act, 1967, Stat. of Ont. 1967, c. 13
Basis for Compensation on Expropriation	September 21, 1967	The Expropriations Act, 1968-69, Stat. of Ont. 1968-69, c. 36
The Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968, Stat. of Ont. 1968, c. 120
Annual Report 1967	January 15, 1968	—
Certain Aspects of the Proposed Divorce Legislation contained in Bill C-187 (Can.)	January 19, 1968	The Divorce Act, Stat. of Can. 1967-68, c. 24, s. 26

Title	Date of Report	Recommendations Implemented by
The Proposed Adoption in Ontario of the Uniform Wills Act	February 5, 1968	—
The Protection of Privacy in Ontario	September 10, 1968	—
The Insurance Act, R.S.O. 1960, c. 190, s. 183, as amended Stat. of Ont. 1961-62, c. 63, s. 4 (commutation)	October 3, 1968	—
Trade Sale of New Houses and the Doctrine of Caveat Emptor	October 4, 1968	—
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	The Landlord and Tenant Amendment Act, 1968-69, Stat. of Ont. 1968-69, c. 58
Limitation of Actions	February 3, 1969	—
Annual Report 1968	April 7, 1969	—
The Age of Majority and Related Matters	May 12, 1969	The Age of Majority and Accountability Act, 1971, Stat. of Ont. 1971, c. 98
Status of Adopted Children	June 3, 1969	The Child Welfare Amendment Act, 1970, Stat. of Ont. 1970, c. 96, s. 23
Report on Family Law: Part I —Torts	November 4, 1969	—
Report on section 20 of The Mortgages Act	March 12, 1970	The Mortgages Amendment Act, 1970, Stat. of Ont. 1970, c. 54, s. 1
Report on Family Law: Part II —Marriage	April 6, 1970	—
Annual Report 1969	April 20, 1970	—
Report on Actions Against Representatives of Deceased Persons	November 30, 1970	The Trustee Amendment Act, 1971, Stat. of Ont. 1971, c. 32, s. 2
The Coroner System in Ontario	January 25, 1971	—
Sunday Obervance Legislation	February 26, 1971	—
Land Registration	March 23, 1971	—
Annual Report 1970	March 31, 1971	—
The Change of Name Act	May 31, 1971	—
Section 16, The Mortgages Act	June 18, 1971	—
Development Control	September 28, 1971	—
Powers of Attorney	January 11, 1972	—

Title	Date of Report	Recommendations Implemented by
Occupiers' Liability	January 11, 1972	—
Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
Review of Part IV of The Landlord and Tenant Act	March 31, 1972	—

APPENDIX B

OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

Chairman	H. Allan Leal, Q.C., LL.M., LL.D.
Vice-Chairman	Honourable James C. McRuer, S.M., LL.D., D.C.L.
Commissioners	Honourable Richard A. Bell, P.C., Q.C. W. Gibson Gray, Q.C. William R. Poole, Q.C.
Counsel	E. F. Ryan, LL.B., LL.M.
Secretary	Miss A. F. Chute
Legal Research Officers	Maureen J. Sabia, B.A., LL.B. Keith B. Farquhar, LL.B., LL.M. (Hons.), LL.M. John F. Layton, M.A., LL.B.
Secretary to Chairman	Mrs. S. Hlynka
Secretary to Vice-Chairman	Miss H. Chu
Secretary to Counsel	Mrs. A. E. Harrower
Project Secretary	Miss Angela Innes, B.A.
Secretary to Legal Research Officers	Miss K. Finnegan
Receptionist	Mrs. R. Wood

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SIXTH ANNUAL REPORT

1972

ONTARIO LAW REFORM COMMISSION



MINISTRY OF THE ATTORNEY GENERAL



ONTARIO LAW REFORM COMMISSION

SIXTH ANNUAL REPORT

1972



MINISTRY OF THE ATTORNEY GENERAL

The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act* for the purpose of promoting the reform of the law and legal institutions. The Commissioners are:

H. ALLAN LEAL, Q.C., LL.M., LL.D., *Chairman*
HONOURABLE J. C. McRUER, O.C., LL.D., D.C.L.
HONOURABLE RICHARD A. BELL, P.C., Q.C.
W. GIBSON GRAY, Q.C.
WILLIAM R. POOLE, Q.C.

Edward F. Ryan, LL.B., LL.M., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are located on the Sixteenth Floor at 18 King Street East, Toronto, Ontario, Canada.

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ONTARIO LAW REFORM COMMISSION

Sixteenth Floor
18 King Street East
Toronto, Ontario

TO THE HONOURABLE DALTON A. BALES, Q.C.,

ATTORNEY GENERAL FOR ONTARIO.

SIXTH ANNUAL REPORT 1972

Dear Mr. Attorney:

We have the honour to present the Sixth Annual Report of the Ontario Law Reform Commission.

INTRODUCTION

1. This report deals with the activities of the Commission during the fiscal year April 1, 1972 to March 31, 1973. It has been an exceptional year because the scope and complexity of the reference on the Administration of Ontario Courts has monopolized a large part of the resources of the central office of the Commission for the past twelve months. Consequently, progress in the remaining projects of the programme of the Commission has been interrupted.

2. During the current year the Commission submitted the following Reports:

Non-Possessory Repairman's Lien
Administration of Ontario Courts, Part I

THE PROGRAMME: REFERRED MATTERS

3. Section 2 (1) (d) of *The Ontario Law Reform Commission Act* requires the Commission to inquire into and consider any matter relating to any subject referred to it by the Attorney General. No new matters were referred to the Commission during the period covered in this report. We devoted our attention to working on prior references: the completion of the Report on Administration of Ontario Courts, Part I; the research and writing involved in the remaining parts of that project; and the continuation of the research in the Sale of Goods Project.

(a)—COMPLETED PROJECTS

(i) *Administration of Ontario Courts, Part I*

4. The project on the Administration of Ontario Courts is the most comprehensive study of the operation of the courts ever undertaken in Ontario. Our efforts have been directed towards ascertaining how the court system should or can be altered to serve the public interest better.

5. The size and complexity of this study has made its completion a most difficult task. In many areas the Commission required new classes of data upon which to base informed recommendations, for the collection of which there existed no precedent in any Canadian jurisdiction. A substantial amount of time, therefore, was devoted to gathering the required data. The information sought was necessary not only for a proper analysis of the existing court system, but also for the purpose of providing a data base capable of adaptation to the continuing needs of the revised court structures proposed by the Commission.

6. The Commission has attempted to formulate proposals for reform which would enable the courts not only to cope better with similar problems over the long run, but also to give the new court administrative system the ability to identify and rectify new problems before they become acute.

7. The amount of labour involved in the task of modernizing our court system is very great. The fact that the role of the courts is inextricably bound up with basic concepts of social and economic policy, as well as with the liberties of every citizen, has caused the Commission consciously to avoid either the appearance or the actuality of facile solutions in favour of detailed and painstaking analysis. Although the title of the project is the Administration of Ontario Courts, its essence has been to find solutions that will preserve the fundamental constitutional safeguard of the independence of the judiciary, while creating a system for the administration of the courts capable of meeting the needs of this province, both present and future.

8. Co-ordinating all the phases of this project has proved to be a difficult task since not all essential or relevant data were available when required. In addition, it was necessary to settle the proposals for administrative and structural changes in the courts themselves before turning to

an analysis of how these essential alterations would affect the ancillary details of the court machinery. The Commission therefore decided to report in three Parts.

9. Part I of the Commission's Report on Administration of Ontario Courts covers the following topics:

- (a) A Philosophy of Court Administration;
- (b) A New Structure for Court Administration;
- (c) The Proposal for Merger of the High Court of Justice of the Supreme Court of Ontario with the County and District Courts;
- (d) The High Court of Justice for Ontario;
- (e) The County and District Courts;
- (f) Motions in Court and Chambers;
- (g) The Court of Appeal;
- (h) The Divisional Court;
- (i) Court Vacations;
- (j) Case Scheduling and Trial Lists in the High Court and County and District Courts;
- (k) The Jury in Civil Cases;
- (l) The Grand Jury;
- (m) Family Courts.

10. The Report on Administration of Ontario Courts, Part I was transmitted to the Attorney General on February 26, 1973.

(b)—PROJECTS IN PROCESS

(i) *Administration of Ontario Courts, Parts II and III*

11. Part II of the Report on Administration of Ontario Courts is now being settled in final form. It contains the Commission's recommendations with respect to:

- (a) Provincial Courts (Criminal Division); and
- (b) The Office of the Crown Attorney.

12. Part III of the Report, which will be completed later in the year, will include a wide range of collateral matters that are directly or indirectly affected by the proposals made in Parts I and II. It will contain recommendations dealing with:

- (a) The Functions and Duties of the Office of Master of the Supreme Court;
- (b) The Rules Committee and the Rules of Practice of the Supreme Court;
- (c) The Small Claims Courts;
- (d) The Impact of Legal Aid;

- (e) The Role of the Legal Profession in the Court Processes;
- (f) Court Interpreters;
- (g) Court Reporting;
- (h) Special Examiners;
- (i) Pre-Trial Procedure in Civil Cases;
- (j) Court Accommodation;
- (k) Jury Selection and Administration;
- (l) Law Reporting;
- (m) Paper and Manpower Systems in Court Offices.

(ii) *Law Relating to the Sale of Goods*

13. A description and the background details of this project are contained in the Commission's Third and Fourth Annual Reports.

14. Immediately following the completion of their work on an ancillary matter related to the project on Consumer Warranties and Guaranties in the Sale of Goods, the research team, headed by Professor Jacob S. Ziegel of the Osgoode Hall Law School of York University, began the main and detailed study of the law relating to the sale of goods. The nature of the topic is such that at least two to three years will be required for our report to be completed.

THE PROGRAMME: PROJECTS INITIATED
BY THE COMMISSION

(a)—COMPLETED PROJECTS

(i) *Non-Possessory Repairman's Lien*

15. Having completed its investigation of the present law governing the lien acquired by the repairman of a chattel for work performed upon that chattel, the Commission submitted a report recommending the creation of a non-possessory lien in certain instances. Repairmen of automobiles and certain other vehicles would thereby be able to preserve their rights against the vehicle by registering a claim of lien rather than having to rely on possession to enforce their rights. The report recommends the enactment of a *Repairman's Lien Act* which would govern the creation of the lien, regulate the rights of the lienholder against those of third parties claiming an interest in the same vehicle, and set out the procedures involved in the sale of the chattel pursuant to the lien.

(b)—PROJECTS IN PROCESS

(i) *Family Law Project*

16. A detailed description of the nature and scope of this project, as well as a statement of the progress to date, is set out in the Commission's Third and Fourth Annual Reports. The Commission's tentative timetable

for completion of this project was interrupted for the reasons set out in the introduction to this report.

17. The Report on Property Subjects will contain significant proposals for the modernization of legal concepts governing property relations within the family unit. A substantial proportion of the precedent and legislation that comprises the present body of law in this area depends for its validity upon economic and social patterns—some of which pre-date Magna Carta—that no longer exist. The theme of the Commission's report is the proposal that there should be a new distribution of property rights and obligations between spouses that accords with contemporary views of the roles of both husband and wife, and that is based upon the legal recognition of the principle that marriage is an economic partnership. The report is nearing completion. The Commission has taken most of the essential policy decisions, and expects to settle the form of the final chapters, which are concerned with the Matrimonial Home and Succession, in the near future.

18. Some of the law with respect to support obligations proved to be an integral part of the Commission's study of Property Subjects, and a chapter of the Report on Property Subjects is devoted to this topic. This chapter, however, sets out only the basic principles. The task of refining these principles and finalizing in detail the Commission's recommendations on support obligations is being carried out in connection with our Report on Support Obligations.

19. At present the Commission's Report on Ontario's Family Courts is nearing completion. The Report will make recommendations with respect to the jurisdiction of the Family Court, the Court's structure and place in the hierarchy of courts in Ontario, its judges, the support services necessary for its proper functioning, and administrative responsibility for the Court. The Commission expects to submit its Report in 1973.

20. The Commission was pleased to send representatives to two joint meetings of the provincial and federal law reform agencies convened to discuss Family Courts. The first meeting was held in Edmonton, in June, 1972, and was convened by The Institute of Law Research and Reform of Alberta. The second meeting was held in Quebec City in February, 1973, and was convened by the Civil Code Revision Office. At both meetings, the chief subject under discussion was the need for, and ways of achieving Family Courts in Canada which would be capable of exercising comprehensive and integrated jurisdiction in all family law matters.

21. The Commission's Report on Children will encompass recommendations on the law of custody and guardianship, adoption, children in need of care and protection, children born outside marriage and the representation of the interests of children in legal proceedings. Since the submission of the Fifth Annual Report there have been a number of significant changes in both legislation and the common law upon which the Commis-

sion has wished further time to reflect. It is expected, however, that the Report will be submitted during the coming year.

22. Research and writing on Jurisdiction and Recognition of Foreign Divorce Decrees still continues, and progress is being made in the final studies on Support Obligations and Separation and Divorce.

(ii) *Law of Property Project*

23. Work continued during the year in the landlord and tenant portion of this project on special problems referable to commercial and industrial leases, proposals for rationalization and revision of the general law governing both residential and commercial premises, and the consideration of proposals for adoption of a standard form lease for use with residential premises. The drafting of the final Report has been delayed for the reasons set out earlier.

24. Continued progress was made this year in the Commission's research programme in the law of trusts.

25. The Commission is continuing its review of the law in Ontario as contained in *The Mortmain and Charitable Uses Act*, R.S.O. 1970, c. 280, governing the holding of land by corporations and charitable organizations. A detailed description of the nature and extent of this study will be found in the Commission's Fifth Annual Report.

(iii) *Law of Evidence*

26. The year saw the Commission's study on the law of evidence brought very near to completion. Starting with fundamental concepts and working through to draft legislation, analyses of the following major topics have been completed in the course of this project: executive privilege, private privilege, opinion evidence, competency, compellability, oaths, hearsay, *res gestae*, prior statements, credibility and character, illegally obtained evidence, notes and documents, business records and judicial notice. The law relating to confessions and admissions is at present under review and when this analysis is finished, the project will be completed. Every stage of this study has been greatly assisted by the contributions and scholarship of Dr. Alan W. Mewett of the Faculty of Law, University of Toronto, the Research Director. In addition, L. R. MacTavish, Esq., Q.C. has worked closely with the Commission and Dr. Mewett in drafting proposed legislation which will accompany the report. It is anticipated that this project will be completed by the middle of the new fiscal year.

(iv) *The Solicitors Act*

27. With the enactment of *The Law Society Act*, R.S.O. 1970, c. 238, a number of sections were removed into that Act from *The Solicitors Act*, R.S.O. 1970, c. 441. The Commission has been reviewing the remaining

sections, which deal chiefly with solicitors' costs, and is, at present, settling the final draft of its Report.

(v) *The Enforcement of Judgment Debts*

28. Work on this project is progressing under the able direction of David E. Baird, Esq. of the Ontario Bar who has submitted two research papers on the adoption of prejudgment attachment in Ontario, and on assets exempt from seizure.

(vi) *Compensation for Victims of Motor Vehicle Accidents*

29. Work continues on this project under the direction of Professor J. B. Dunlop, Faculty of Law, University of Toronto. The Commission has approved the form of its Report, and expects to complete it in the coming year.

LIAISON WITH OTHER LAW REFORM AGENCIES

30. The Commission continues to enjoy cordial and close relations with law reform agencies, not only in Canada, but throughout the world. These relationships are particularly fruitful in the exchange of ideas and information. We are greatly assisted in our work by the receipt of working papers, reports, and other documents from a variety of jurisdictions, and by the willingness on the part of members of all law reform bodies to discuss matters of common interest. Without this spirit of co-operation, meaningful comparative research would not be possible.

31. Throughout the world of law reform, we note inevitable changes in personnel due to various circumstances, and to those who leave this company we express our recognition of and appreciation for their significant contributions. We particularly note, with regret, the loss to formal law reform, but not to its spirit, occasioned by the resignations of The Honourable Mr. Justice Leslie Scarman from the English Law Commission, The Honourable Mr. Justice W. B. Campbell from the Queensland Law Reform Commission, and The Honourable Mr. Justice R. G. Reynolds from the New South Wales Law Reform Commission.

32. In June 1972, and again in February 1973, representatives from the Ontario Commission attended joint meetings of all the law reform agencies in Canada. We have made mention of both these meetings in more detail earlier in this report. These meetings afford an incomparable opportunity to discuss matters of concern to all who are engaged in the work of law reform.

33. As a result of a visit to the Commission by Dean John MacLaren of the Faculty of Law, University of Windsor, the Commission was able to establish closer ties with the faculty of that Law School. We are indebted to Dean MacLaren for his assistance and co-operation.

34. We also wish to express our appreciation to the following visitors to the Commission who gave freely of their time and experience to discuss with us particular projects on our mutual programmes: J. Noel Lyon, Esq. and David H. Vickers, Esq. of the Law Reform Commission of British Columbia, and J. T. McJannet, Esq., the Project Director of the Law Reform Commission of Manitoba.

LIAISON WITH THE LEGAL PROFESSION

35. The Commission continues to maintain close liaison with the members of the legal profession, not only through those Commissioners who are themselves in and of the practising Bar, but also through the Commission's representation in the Ontario sub-sections of the Canadian Bar Association, and through its representation on the Ontario Council.

36. In September 1972, we were particularly happy to welcome to the Commission L.-P. de Grandpré, C.C., Q.C., LL.D., President of the Canadian Bar Association, through whose gracious and generous intervention even stronger links have been forged between the Commission and the national office of the Association. We are indebted to him for his efforts in this regard.

37. In every phase of its work, on both a formal and an informal basis, the Commission has been greatly assisted by the informed, thoughtful and constructive support of the legal profession. To all those who have given us the benefit of their learning and experience, we express our appreciation.

38. Special mention should be made of the contributions to the work of the Commission made by the academic lawyers from the various law schools in Ontario. We acknowledge our debt to them, for without their dedication to the pursuit of excellence in legal scholarship, our work would be severely handicapped. We look forward to their continuing and productive involvement in the work of law reform.

CONCLUSION

39. Once again the Commission wishes to convey its gratitude to Counsel to the Commission and to the Legal Research Officers, for their substantial contributions to its work. Special thanks must also go to the Secretary, and to the administrative staff. Their loyalty and devotion to their tasks is very much appreciated.

40. A statement of the full complement of the Commission is contained in Appendix B.

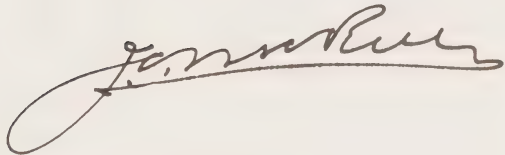
41. To you, Mr. Attorney, and to the officers of your Ministry, the Commission expresses its appreciation for the support that has been given to us. We look forward to the coming year, confident that its challenges

will be met, and that the cause of law reform in Ontario will be advanced even further.

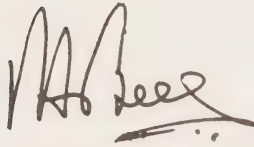
All of which is respectfully submitted,

A handwritten signature in dark ink, appearing to read "Allan Leal", written in a cursive style.

H. ALLAN LEAL,
Chairman.

A handwritten signature in dark ink, appearing to read "James C. McRuer", written in a cursive style with a long horizontal flourish at the end.

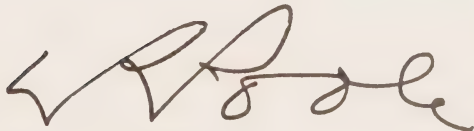
JAMES C. McRUER,
Commissioner.

A handwritten signature in dark ink, appearing to read "Richard A. Bell", written in a cursive style.

RICHARD A. BELL,
Commissioner.

A handwritten signature in dark ink, appearing to read "W. Gibson Gray", written in a cursive style.

W. GIBSON GRAY,
Commissioner.

A handwritten signature in dark ink, appearing to read "William R. Poole", written in a cursive style.

WILLIAM R. POOLE,
Commissioner.

March 31, 1973

APPENDIX A

REPORTS MADE BY THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Recommendations Implemented by
No. 1 The Rule Against Perpetuities	February 1, 1965	—
No. 1A Supplementary Report on the Rule Against Perpetuities	March 1, 1966	The Perpetuities Act, 1966, Stat. of Ont. 1966, c. 113
No. 2 The Wages Act; Assignment of Wages	March 3, 1965	The Wages Amendment Act, 1968, Stat. of Ont. 1968, c. 142
No. 3 Personal Property Security Legislation	March 28, 1965	—
No. 3A Supplementary Report on Personal Property Security Legislation	May 18, 1966	The Personal Property Security Act, 1967, Stat. of Ont. 1967, c. 72
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Basis for Compensation on Expropriation	September 21, 1967	The Expropriations Act, 1968-69, Stat. of Ont. 1968-69, c. 36
The Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968, Stat. of Ont. 1968, c. 120
Annual Report 1967	January 15, 1968	—
Certain Aspects of the Proposed Divorce Legislation contained in Bill C-187 (Can.)	January 19, 1968	The Divorce Act, Stat. of Can. 1967-68, c. 24, s. 26
The Proposed Adoption in Ontario of the Uniform Wills Act	February 5, 1968	—
The Protection of Privacy in Ontario	September 10, 1968	—
The Insurance Act, R.S.O. 1960, c. 190, s. 183, as amended Stat. of Ont. 1961-62, c. 63, s. 4 (commutation)	October 3, 1968	—

Title	Date of Report	Recommendations Implemented by
Trade Sale of New Houses and the Doctrine of Caveat Emptor	October 4, 1968	—
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	The Landlord and Tenant Amendment Act, 1968-69, Stat. of Ont. 1968-69, c. 58
Limitation of Actions	February 3, 1969	—
Annual Report 1968	April 7, 1969	—
The Age of Majority and Related Matters	May 12, 1969	The Age of Majority and Accountability Act, 1971, Stat. of Ont. 1971, c. 98
Status of Adopted Children	June 3, 1969	The Child Welfare Amendment Act, 1970, Stat. of Ont. 1970, c. 96, s. 23
Report on Family Law: Part I —Torts	November 4, 1969	—
Report on Section 20 of The Mortgages Act	March 12, 1970	The Mortgages Amendment Act, 1970, Stat. of Ont. 1970, c. 54, s. 1
Report on Family Law: Part II —Marriage	April 6, 1970	The Civil Rights Statute Law Amendment Act, 1971, Stat. of Ont. 1971, c. 50, s. 55 (partial implementation only)
Annual Report 1969	April 20, 1970	—
Report on Actions Against Representatives of Deceased Persons	November 30, 1970	The Trustee Amendment Act, 1971, Stat. of Ont. 1971, c. 32, s. 2
The Coroner System in Ontario	January 25, 1971	The Coroners Act, 1972, Stat. of Ont. 1972, c. 98
Sunday Observance Legislation	February 26, 1971	—
Land Registration	March 23, 1971	—
Annual Report 1970	March 31, 1971	—
The Change of Name Act	May 31, 1971	The Change of Name Amendment Act, 1972, Stat. of Ont. 1972, c. 44
Section 16, The Mortgages Act	June 18, 1971	—
Development Control	September 28, 1971	—
Powers of Attorney	January 11, 1972	—
Occupiers' Liability	January 11, 1972	—
Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
Review of Part IV of The Landlord and Tenant Act	March 31, 1972	The Landlord and Tenant Amendment Act, 1972, Stat. of Ont. 1972, c. 123
Annual Report 1971	March 31, 1972	—
The Non-Possessory Repairman's Lien	October 4, 1972	—
Administration of Ontario Courts, Part I	February 26, 1973	—

APPENDIX B

OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

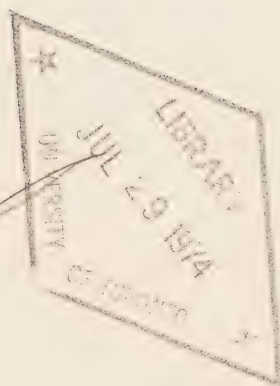
Chairman	H. Allan Leal, Q.C., LL.M., LL.D.
Vice-Chairman	Honourable James C. McRuer, O.C., LL.D., D.C.L.
Commissioners	Honourable Richard A. Bell, P.C., Q.C. W. Gibson Gray, Q.C. William R. Poole, Q.C.
Counsel	E. F. Ryan, LL.B., LL.M.
Secretary	Miss A. F. Chute
Secretary to Administrative Officer	Mrs. E. A. Wolaniuk
Legal Research Officers	Maureen J. Sabia, B.A., LL.B. Keith B. Farquhar, LL.B., LL.M. (Hons.) LL.M. John F. Layton, M.A., LL.B.
Secretary to Chairman	Mrs. S. Hlynka
Secretary to Vice-Chairman	Mrs. A. E. Harrower
Secretary to Counsel	Miss D. M. Pell
Project Secretary	Miss M. E. Adam
Secretaries to Legal Research Officers	Miss K. Finnegan Mrs. P. C. Gronroos
Receptionist	Mrs. B. G. Woodley

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Government
of Ontario
1973

SEVENTH ANNUAL REPORT 1973

ONTARIO LAW REFORM COMMISSION



Ministry of the
Attorney
General

SEVENTH ANNUAL REPORT 1973

ONTARIO LAW REFORM COMMISSION



Ministry of the
Attorney
General

The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act* for the purpose of promoting the reform of the law and legal institutions. The Commissioners are:

H. ALLAN LEAL, Q.C., LL.M., LL.D., *Chairman*
HONOURABLE JAMES C. MCRUER, O.C., LL.D., D.C.L.
HONOURABLE RICHARD A. BELL, P.C., Q.C.
W. GIBSON GRAY, Q.C.
WILLIAM R. POOLE, Q.C.

Lyle S. Fairbairn, B.A., LL.B., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are located on the Sixteenth Floor at 18 King Street East, Toronto, Ontario, Canada.

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ONTARIO LAW REFORM COMMISSION

Sixteenth Floor
18 King Street East
Toronto, Ontario
M5C 1C5

TO THE HONOURABLE ROBERT S. WELCH, Q.C., LL.D.
ATTORNEY GENERAL FOR ONTARIO

SEVENTH ANNUAL REPORT 1973

Dear Mr. Attorney:

We have the honour to present the Seventh Annual Report of the Ontario Law Reform Commission.

INTRODUCTION

1. This report deals with the work of the Commission during the fiscal year April 1, 1973 to March 31, 1974. It was a period of critical challenge, intense activity and generous fulfilment. The year opened with the Commission still singularly committed to the task of completing the two final portions of the report on the reference concerning the Administration of Ontario Courts, whilst harbouring a genuine concern for the seeming lack of progress being achieved in other important projects in its programme. To be concerned, however, is not to despair and with a special effort from a number of diligent and competent people, including the administrative staff of the central office of the Commission, we were able during these twelve months to complete the project on the Administration of Ontario Courts; prepare and submit substantial reports in three additional subjects in the Family Law Project; settle final drafts of reports in two other subject areas; as well as making appreciable progress in other projects which were not scheduled for completion in this past year. This report deals with the details of these activities.

2. In summary, during the year under review the Commission submitted the following seven reports:

Administration of Ontario Courts

Part II — Provincial Courts (Criminal Division)
and Office of the Crown Attorney

Part III — General

Family Law Project

Part III — Children

Part IV — Family Property Law

Part V — Family Courts

The Solicitors Act

Motor Vehicle Accident Compensation

THE PROGRAMME: REFERRED MATTERS

3. Section 2 (1) (d) of *The Ontario Law Reform Commission Act* requires the Commission to inquire into and consider any matter relating to any subject referred to it by the Attorney General. No new matters were referred to the Commission during the period covered in this report. Work on one prior reference, the Administration of Ontario Courts, was completed during the year and research in the other remaining reference, the Sale of Goods Project, was continued.

(a)—COMPLETED PROJECTS

(i) *Administration of Ontario Courts*

4. Part II of the Report on Administration of Ontario Courts was tabled in the Legislature, along with Part I, on November 22, 1973. The contents of Part I appeared in the Sixth Annual Report and need not be repeated here. Part II of the Report deals exhaustively with the Provincial Courts (Criminal Division), including their structure; the appointment, background, training, salary, pension, holidays, jurisdiction and duties of the Chief Judge, the senior judges and judges of the court; justices of the peace; place of sittings; administrative personnel; physical facilities; role of police officers in the courts; witnesses; and the administrative processing and trial of both criminal and provincial offences. With regard to the latter recommendations have been made for the adoption of separate procedures for the disposition of "infractions" which are defined to include municipal parking by-law violations and certain minor offences under *The Highway Traffic Act*. The Report also recommends the decentralization of the processing and trial of offences in Metropolitan Toronto, since this area is experiencing the greatest congestion and delay due to the burgeoning case loads.

5. The second half of Part II is devoted to a full discussion of the office of the Crown attorneys in this jurisdiction, both in their advisory and prosecutorial roles, and includes matters of their appointment, termination of employment, assignment to duties, education and training, functions as prosecutors before the various courts and concludes with an analysis and statement of position with regard to the growing practice of plea negotiation. The several recommendations are directed towards upgrading the status and functioning of the incumbents of this critically-important office in the administration of criminal justice within the province.

6. Part III of the Report on Administration of Ontario Courts was released for publication on January 21, 1974, the Legislature being out of session, and was tabled on March 28, 1974. This final portion of the Report presents a wide-ranging discussion of matters ancillary to the court system in Ontario. The subject matters reviewed are the Master's Office, the Rules Committee under *The Judicature Act*, court interpreters, court reporting, special examiners, pre-trial conference in civil cases, the impact of legal aid on the courts, the role of the legal profession, court accommodation, paper and manpower systems, law reporting, and the Small Claims Courts. A separate chapter is devoted to each of these subject matters and Part III concludes with a cumulative summary of the recommendations contained in all three parts of the Report. With the submission of this final part the work of the Commission on the reference on the Administration of Ontario Courts has been completed.

(b)—PROJECTS IN PROCESS

(i) *Law Relating to the Sale of Goods*

7. As stated in the Sixth Annual Report 1972, immediately following the completion of their work on the sub-project on Consumer Warranties and Guarantees, the research team, under the direction of Professor Jacob S. Ziegel of the Osgoode Hall Law School of York University, was asked to resume work on the main body of the project involving a review of the law relating to the sale of goods. It was then anticipated that the nature of the topic was such that at least two or three years would be required for the completion of the report. Good progress has been made throughout all stages of the work during the current fiscal year and we are now hopeful that the report of our research team will be in the hands of the Commission by March 31, 1975.

THE PROGRAMME: PROJECTS INITIATED
BY THE COMMISSION

(a)—COMPLETED PROJECTS

(i) *Motor Vehicle Accident Compensation*

8. The Commission's Report on Motor Vehicle Accident Compensation was submitted to the Attorney General on November 9, 1973 and tabled in the Legislature on his behalf on April 4, 1974 by the Honourable John T. Clement, Q.C., Minister of Consumer and Commercial Relations.

9. After an intensive and careful analysis of the present method of compensating victims of motor vehicle accidents, the Commission concluded that the "existing system", and especially the tort regime, is inadequate, inefficient, slow and expensive.

10. The Commission, accordingly, recommended that an integrated scheme specifically concerned with compensation to motor vehicle accident victims, not dependent upon the fault principle, should replace the existing system. After a comparative study and analysis of similar legislation in various jurisdictions, inside and outside Canada, the Commission then presented the details of a plan for compensation, without regard to fault, for victims of motor vehicle accidents.

11. The Report also contains a discussion and recommendations for means of achieving more effective rehabilitation, emergency treatment and accident prevention, and concludes with a recommendation for the establishment of a Motor Vehicle Accident Compensation Board to assist in the implementation and administration of the plan and to act as an advisory body with respect to changes that may be required as a result of experience gained in its operation.

(ii) *The Solicitors Act*

12. The Commission's Report on *The Solicitors Act* was tabled in the Legislature on March 28, 1974. With the enactment of the revised *Law Society Act, 1970*, *The Solicitors Act* lost its provisions dealing with the admission of barristers and solicitors to practice, the regulation of students-at-law, the regulation of barristers and solicitors in practice, and the jurisdiction of the court over solicitors as its officers. All that remained in the Act were those provisions relating to solicitors' costs, the manner in which the quantum of fees charged could be reviewed, the manner of their collection, and the regulations relating to agreements between solicitors and clients respecting them.

13. The existing legislation is based on English legislation which, in some respects, is no longer suitable to the needs of current Ontario practice. In many instances, the language of the present statute is archaic and obscure, and has caused difficulty in interpretation and application. One of the serious deficiencies is that in some areas the statute does not hold an even hand between solicitors and their clients.

14. The desideratum is that the statute should provide the general public with a sensible course of action to ensure that the legal fees it is asked to pay can be settled and determined in a fair and reasonable manner.

15. In the pursuit of this goal the Commission has concluded that the basic principles and procedures provided for in the existing legislation were sound but they could be presented in a more orderly, intelligible and rational way. Accordingly, the Commission has recommended the repeal of the existing legislation and its replacement with a new act in the form submitted in the draft bill, regulations and forms accompanying the report.

(b)—PROJECTS IN PROCESS

(i) *Family Law Project*

16. On March 11, 1974 the reports on three additional topics in the Family Law Project were tabled in the Legislature.

17. The Report on Family Law, Part III, Children comprised five subject matters of the law relating to children: the status and rights of children born outside marriage; adoption; the care and protection of neglected children; guardianship and custody; and the proposal for the establishment of the office of the law guardian to give independent legal representation concerning the interests of children in these and other matters. In dealing with the important, but highly complex, issues in the reform of the law relating to children born outside marriage, the Commission has taken the unequivocal position and recommended that the law of Ontario should declare positively that for all its purposes all children should have equal status. The balance of the recommendations on this subject

matter is devoted to the means by which this objective could be attained and the incidents of this status granted and secured.

18. Part IV of the Report is devoted to the much debated and currently topical issues in Family Property Law. After a full presentation of the development, present state, and inadequacies of the law of separation of property in this jurisdiction, the report proceeds to formulate, in detail, the proposals for a new matrimonial property regime which is recommended for adoption in Ontario as the basic regime governing matrimonial property rights and embodying the principle of the sharing or division of assets between husband and wife. This fundamental reform is supplemented by special provisions dealing with the matrimonial home and its contents, a new code governing the distribution of assets on an intestacy, major extensions to the scope of the remedial provisions of *The Dependants' Relief Act*, and other consequential or necessary changes in matrimonial property law.

19. Part V of the Report deals with Family Courts. This particular volume carries the Commission's recommendation for the establishment of a new Family Court having integrated jurisdiction in all family law matters. The report deals at some length with the organization, function, jurisdiction and administration of the proposed new court along with the full range of satellite support services and personnel now generally accepted as being necessary for the proper processing, adjudication and disposition of problems arising in the family relations.

20. The Commission has now turned its attention to the drafting of the sixth report in the series, the study involving support obligations. The two remaining subject matters to be dealt with in the Family Law Project are the jurisdiction of the courts in matrimonial causes and the recognition of foreign divorce decrees; legal separation and divorce. The latter subjects will reflect the Ontario experience with the federal legislation on divorce as well as recommendations concerning the desirability of establishing the remedy of judicial separation which is not available in Ontario at the present time.

(ii) *Law of Property*

21. During the course of the year considerable progress was made in the work concerning the Law of Property Project. The current position of the review of the various topics in this part of our programme is as follows:

(a) *Landlord and Tenant*

22. The research has been completed on that part of this project dealing with the general principles of the law governing both residential and commercial premises not dealt with in previous reports, and the principles of the law particularly applicable to industrial, commercial and agricultural

tenancies. Preparation of the final draft of the report to the Attorney General is in course of preparation. It is anticipated that the report will be completed for submission before the end of the current calendar year.

(b) *Law of Trusts*

23. Research studies during the year were submitted to the Commission and fully considered by them in four areas of trust law: imperfect trust provisions; trustees' powers of investment; powers of maintenance and advancement; and restraints on anticipation and on alienation. Policy decisions have been taken concerning recommendations to be made in all these fields and the task of preparation of the first drafts of the report for the Attorney General has been allotted.

24. In addition, a working paper was received dealing with general administrative powers of trustees and research continued with regard to the law governing the appointment and removal of trustees, the transmission of their office, title and powers to their successors.

25. It is the ultimate goal of this project to make recommendations for the reform of the law which would enable the enactment of a group of new statutes, including *The Trustee Act*, *The Administration of Estates Act*, *The Settled Estates Act*, *The Law of Property Act*, and *The Variation of Trusts Act*, which with a revised *Intestate Succession Act* and *The Uniform Wills Act* would provide a rational and modernized code of law governing trusts and the administration of estates. Much work remains to be done but progress has been achieved.

(c) *Basic Principles of Real Property Law*

26. Continued progress was made this year in the difficult and important research activity related to the review of the basic principles of real property law. The work continues.

(d) *Law of Mortgages*

27. Provision has been made in the budget for the fiscal year opening April 1, 1974 for the allocation of funds required to commence the review of the law of mortgages. We are pleased to be in a position to announce that this work will begin in the summer of 1974.

(e) *Mortmain and Charitable Uses*

28. Reference has been made in previous annual reports to the fact that the Commission had undertaken the task of reviewing the Ontario law on this subject as contained in *The Mortmain and Charitable Uses Act*, R.S.O. 1970, c. 280. In view of the Commission's more pressing commitments and due to the consequent lack of available research personnel, nothing was done in this area this past year.

(iii) *Law of Evidence*

29. The Sixth Annual Report 1972 contained a detailed statement of the matters under review in this project. In the circumstances, it also expressed an overly optimistic view concerning the probable completion date. Since the final draft of the report is now in course of preparation, we have every expectation that the task will be completed by the end of the current calendar year.

(iv) *The Enforcement of Judgment Debts*

30. The research in this project is under the capable direction of David E. Baird, Esq. of the Ontario Bar. With the submission by the research team, and the consideration by the Commission, of a perceptive and helpfully analytical working paper on the organization and function of a proposed enforcement office, substantial progress has been made in the pursuit of formulating a more rational and expeditious procedure for the enforcement of judgment debts. It would appear to be generally conceded that present procedures are unnecessarily expensive, and otherwise unsatisfactory, from the point of view of both debtors and creditors. In the immediate future we plan to submit our tentative proposals to a group of persons and associations with practical experience in these problems and to invite their comments.

(v) *The Change of Name Act*

31. As a result of representations made to us from agencies, both inside and outside the government administration, the Commission has decided to undertake another review of *The Change of Name Act* having particular regard to the effect of this legislation on the right of married women to use, or resume the use of, their maiden names during marriage, upon separation, and after a divorce.

32. There would appear to be three topical issues which may require clarification by legislation. They are as follows:

(a) Does the mandatory wording of section 2 (1) of *The Change of Name Act* render the effect of that Act on the common law so uncertain that clarification by way of further amendment is required?

(b) If it is clear that the present legislation does not alter the position at common law, namely, that changes of name may be made informally in the absence of a fraudulent purpose, in what circumstances, if any, should the legislation be amended to accord legal recognition to informal changes of name?

(c) Does the mandatory wording of section 4 (1) of *The Change of Name Act* effectively preclude married women from making applications under this legislation to secure legal recognition for the use of their maiden names?

33. The Commission has appointed a research assistant on a part-time basis to conduct the necessary research in this area and hopes to be in a position to report to the Minister during the current calendar year.

(vi) *Expungement of Records of Conviction of Provincial Offences*

34. The recent legislation of the Parliament of Canada providing for a conditional pardon of offences under the Criminal Code and other federal statutes has not assuaged, but rather has aggravated, the sense of injustice felt by a number of people arising out of the permanent retention of records of conviction of offences under provincial statutes. This topic was included in the programme of the Commission in the early stages of its existence but had not been carried beyond the stage of preliminary investigation when it was abandoned in favour of treatment of what were then regarded as more pressing problems. Not surprisingly, the pressure on the Commission to consider and recommend remedial measures in this area has not abated and more recent representations have moved us to make a new attempt to resolve at least some of the problems. The project has been placed under the direction of one of the Commissioners, W. R. Poole, Q.C., and a preliminary working paper has already been submitted and considered. The work continues.

(vii) *Deferred Items in the Programme*

35. The Commission has added to its programme a number of topics which it is planned to review as soon as time, both of research personnel and the Commissioners, becomes available to pursue them. Reference has been made in previous annual reports to some of them and they are listed here simply to complete this statement of our programme. They include the prescription periods under *The Mercantile Law Amendment Act*, powers of entry granted under provincial legislation and subordinate legislation, and prejudgment interest on damage awards.

LIAISON WITH OTHER LAW REFORM AGENCIES

36. We were privileged in the course of the past twelve months to welcome visitors with a shared interest in law reform and associated with law reform agencies in widely dispersed areas of the common law world. It is always pleasurable and profitable to have the opportunity to discuss common problems with our colleagues from other jurisdictions. The simultaneity and similarity of these problems is quite revealing.

37. We appreciated a renewal of our ties with the Scottish Law Commission and were honoured by the visit of the Rt. Hon. Norman R. Wylie, Q.C., M.P., Lord Advocate of Scotland, and the Legal Secretary of his Department, Mr. J. M. Moran.

38. The visits of the Honourable Mr. Justice C. L. D. Meares, Chairman, Law Reform Commission of New South Wales, and that of Professor P. S. Atiyah were timely and helpful since they are both members of the National Rehabilitation and Compensation Scheme Committee of Inquiry in Australia and we were engrossed in the completion of our Report on Motor Vehicle Accident Compensation. Later in the year we were also able to meet the Secretary of their Commission, Mr. Robert J. Watt.

39. While he was in Canada as a special guest at the Annual Meeting of the Canadian Bar Association, we were visited by Norman W. Hill, Esq., Q.C., Vice-President of the Organization of Commonwealth Caribbean Bar Associations.

40. We were delighted that an old friend of the Commission, Mr. Roger Hayes, Department of Justice, Republic of Ireland, was able to arrange his schedule so as to pay us a visit after having attended the Diplomatic Conference on Wills in Washington, D.C., in October last.

41. Professor Brian Grosman, College of Law, University of Saskatchewan, and recently appointed Chairman of the Law Reform Commission of Saskatchewan, was with us on two occasions during the year. The establishment of the Saskatchewan Commission is a particularly happy event since it completes the national family — *A Mari Usque Ad Mare*. We wish them well in their endeavours.

ACKNOWLEDGMENTS

42. The Ontario Law Reform Commission is approaching the completion of its tenth year of operation since its founding in 1964.

43. Annexed hereto as Appendix A is a list of the reports which have been submitted in that period and an indication of the extent to which our recommendations have found their way into legislation. In this decennial year we remain mindful and wish to record our appreciation of all those who have supported and sustained us — the members of the judiciary, the members of the practising bar, the professional law teachers at the various law schools, the officers in governmental administration, the media and the general public. In a true sense we have been partners in a noble experiment.

44. The complement of legal research personnel is rarely static but in the past year our losses have been exceptional. To those who have served us so devotedly and competently — Mr. Edward F. Ryan, Counsel, Miss Maureen J. Sabia, Messrs. Keith B. Farquhar and John F. Layton, legal research officers, we express our grateful thanks and wish them well in their new fields of endeavour. We are pleased to announce their replacement by Mr. Lyle S. Fairbairn, Counsel, and Miss M. P. Richardson and Mr. M. A. Springman, as legal research officers. The list of present officers and full-time staff of the Commission is contained in Appendix B to this

report. Our special thanks are offered to the Secretary, Miss A. F. Chute, and to the administrative staff for responding so willingly and generously to the singularly heavy demands made upon them this past year.

45. May we also record our thanks and appreciation to your predecessor in the office of Attorney General of Ontario, and to the officers of the Ministry. To you, Mr. Attorney, as you enter upon the new and onerous duties of your office, we extend felicitations and best wishes.

CONCLUSION

46. Bacon's Essay "Of Innovations" contains the following sobering admonition:

"He that will not apply new remedies must expect new evils; for time is the greatest innovator; and if time of course alter things to the worse, and wisdom and counsel shall not alter them to the better, what shall be the end?"

47. The fact of change has been constant throughout the recorded history of human society. The rate of change is a stark reality in contemporary experience. If one adds an evolving sense of justice to these dimensions, the challenge for the immediate and more remote future appears clear and compelling.

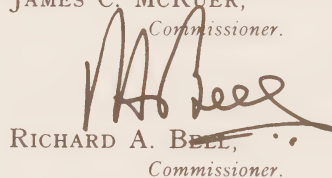
All of which is respectfully submitted.



H. ALLAN LEAL,
Chairman.



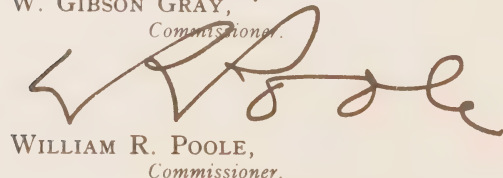
JAMES C. MCRUER,
Commissioner.



RICHARD A. BELL,
Commissioner.



W. GIBSON GRAY,
Commissioner.



WILLIAM R. POOLE,
Commissioner.

May 6, 1974

APPENDIX A

REPORTS MADE BY THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Recommendations Implemented by
No. 1 The Rule Against Perpetuities	February 1, 1965	—
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Administration of Ontario Courts, Part III	December 17, 1973	—
Report on Family Law: Part IV — Family Property Law	February 8, 1974	—
Report on Family Law: Part V — Family Courts	February 8, 1974	—

APPENDIX B

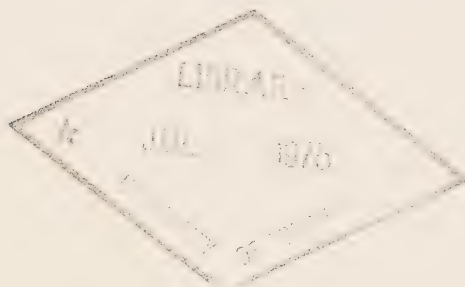
OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

Chairman	H. Allan Leal, Q.C., LL.M., LL.D.
Vice-Chairman	Honourable James C. McRuer, O.C., LL.D., D.C.L.
Commissioners	Honourable Richard A. Bell, P.C., Q.C. W. Gibson Gray, Q.C. William R. Poole, Q.C.
Counsel	Lyle S. Fairbairn, B.A., LL.B.
Secretary	Miss A. F. Chute
Legal Research Officers	M. A. Springman, B.A., M.A., M.Sc., LL.B. M. P. Richardson, B.A., M.A., LL.B.
Special Project Research Consultant	C. M. Creighton, B.A., LL.B.
Secretary to Chairman	Mrs. S. Hlynka
Secretary to Vice-Chairman	Mrs. A. E. Harrower
Secretary to Counsel	Miss D. M. Pell
Project Secretary	Mrs. M. E. Williams
Secretary to Administrative Officer	Mrs. E. A. Wolaniuk
Secretaries to Legal Research Officers	Mrs. Cynthia D. Smith Mrs. P. John
Receptionist	Mrs. B. G. Woodley

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EIGHTH ANNUAL REPORT 1974

ONTARIO LAW REFORM COMMISSION



Ministry of the
Attorney
General

EIGHTH ANNUAL REPORT 1974

ONTARIO LAW REFORM COMMISSION



Ministry of the
Attorney
General

The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act* for the purpose of promoting the reform of the law and legal institutions. The Commissioners are:

H. ALLAN LEAL, Q.C., LL.M., LL.D., *Chairman*

HONOURABLE JAMES C. McRUER, O.C., LL.D., D.C.L.

HONOURABLE RICHARD A. BELL, P.C., Q.C.

W. GIBSON GRAY, Q.C.

WILLIAM R. POOLE, Q.C.

Lyle S. Fairbairn, B.A., LL.B., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are located on the Sixteenth Floor at 18 King Street East, Toronto, Ontario, Canada.

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ONTARIO LAW REFORM COMMISSION

Sixteenth Floor
18 King Street East
Toronto, Ontario
M5C 1C5

To The Honourable John T. Clement, Q.C.
Attorney General for Ontario

EIGHTH ANNUAL REPORT 1974

Dear Mr. Attorney:

We have the honour to present the Eighth Annual Report
of the Ontario Law Reform Commission.

INTRODUCTION

1. This report deals with the work of the Commission during the fiscal year April 1, 1974 to March 31, 1975. During the last nine months, at the request of the Attorney General, the Commissioners, along with the research and administrative staff at the central office, have been singularly committed to the completion of the research and the preparation of the Report on Support Obligations in the Family Law Project. Earlier in the year, the Commission initiated a study of the International Convention Providing a Uniform Law on the Form of the International Will, drawn up by the Diplomatic Conference on Wills, Washington, D.C., October 16-26, 1973. The Report on this subject was submitted to the Attorney General on July 5, 1974. In addition to these items the Commission, through its research staff retained outside the central office, has attempted to sustain a high level of production in other projects in its programme, including: the reference on The Sale of Goods Act; a new reference on The Religious Institutions Act and The Mortmain and Charitable Uses Act; The Change of Name Act; and the Law of Property Project. This report deals with the details of these activities.

THE PROGRAMME: REFERRED MATTERS

2. Section 2 (1) (d) of *The Ontario Law Reform Commission Act* requires the Commission to inquire into and consider any matter relating to any subject referred to it by the Attorney General.

PROJECTS IN PROCESS

(i) *Law Relating to the Sale of Goods*

3. We stated in our Seventh Annual Report 1973 that the report of our research team, under the direction of Professor Jacob S. Ziegel, was scheduled for completion by March 31, 1975. The work of conducting the necessary research and preparing research papers in all essential areas of this field of study has progressed satisfactorily, though a little more slowly than we had anticipated, over the year under review, with the result that the date for the receipt of the report of the research team has been rescheduled for June 30, 1975.

4. A grasp of the nature of the project and the scope of the research undertaken can be gained from the following list of the research topics assigned and working papers prepared:

I. *Empirical and Statistical Studies*

- (1) Canadian Manufacturers' Association Questionnaire and Statistical Results.
- (2) Analysis of C.M.A. Survey Results

- (3) A Descriptive Overview of Marketing Functions as Perceived and Performed by the Entrepreneur.
- (4) Analysis of Contractual Terms and Warranty Documents based on Materials Received from O.L.R.C.-C.M.A. Questionnaire Respondents

II. *Formation of Contract*

- (1) The Effect of Unsigned Writings in the Formation of Sales Contracts: "The Battle of Forms" and Related Questions
- (2) The Law of Consideration
- (3) Good Faith in Sales Transactions
- (4) Formalities of Formation: Statute of Frauds
- (5) The Uncertainty of Terms in Sales Transactions
- (6) Privity of Contract
- (7) The Doctrine of Frustration in the Law of Sales
- (8) Mistake in Contracts for the Sale of Goods
- (9) Research Memoranda
 - (A) Sealed Contracts in Sale of Goods
 - (B) Effect of Absent Time Provisions in Sales Contracts (UCC 2-309)
 - (C) Output and Requirement Contracts and Exclusive Dealing (UCC 2-306)

III. *The Parties' Obligations, Performance and Remedies*

- (1) Scope of *The Sale of Goods Act*
- (2) The Classification of Contractual and Non-Contractual Obligations
- (3) Implied Conditions and Warranties in *The Sale of Goods Act*, Sections 13-16
- (4) Fair Exchange of Values in Sales Transactions: The Doctrine of Unconscionability
- (5) Disclaimer Clauses
- (6) Performance Obligations: Delivery and Payment
- (7) Instalment Contracts
- (8) Anticipatory Repudiation and Mitigation of Damages

- (8a) Assignment of Choses in Action and Delegation of Performance
- (9) Seller's Remedies
- (10) Buyer's Remedies
- (11) Arbitration

IV. *Property Effects*

- (1) Property in Goods, Incidence and Consequences
- (2) The *Nemo Dat* Doctrine and Sales Transactions
- (3) Documents of Title

V. *Comparative and Miscellaneous*

Sale of Moveables in Quebec Law

5. After the receipt of the report of the research team in June, 1975 the Commission will devote its attention to the formulation of its recommendations for reform and the preparation of the final report for the Minister. We are grateful to Professor Ziegel and his colleagues on the research team for their continued co-operation and scholarly assistance in the exhaustive review of an important area of the law of this jurisdiction.

(ii) *The Religious Institutions Act and The Mortmain and Charitable Uses Act.*

6. By letter dated May 14, 1974, the then Attorney General, the Honourable Robert S. Welch, Q.C., directed a reference to the Commission in the following terms:

to examine, study and enquire into the past, present and future utility and effectiveness of The Mortmain and Charitable Uses Act and The Religious Institutions Act, and, after study and consideration, to recommend such changes in the law relating to these Acts as in the opinion of the Ontario Law Reform Commission are necessary and/or desirable.

7. In general, *The Religious Institutions Act* prescribes a statutory scheme under which religious societies or congregations may, through the simple device of appointing trustees, arrange for the acquiring, mortgaging, selling or otherwise dealing with land acquired for religious or congregational purposes. Thus the necessity of incorporation and corporate administration is avoided. By express terms, however, the convenient and remedial procedures of the legislation are open only to Christians and Jews. While no doubt acceptable when originally passed, the legislation seems deficient in the modern pluralistic society of Ontario and, understandably, there have been some requests to extend the applicability of the legislation to other religious sects.

8. *The Mortmain and Charitable Uses Act* deals with a related, though different problem. Historically, mortmain legislation dealt with the device of licensing the holding of land by corporations. Corporations never die and for reasons of taxation, control of wealth, etc., it was thought necessary to exercise rigid supervision over the amount and duration of ownership of land by these institutions. The Act is comprised of two largely unassociated parts, viz., a part concerning mortmain which applies to corporations and requires all corporations which have no other authority to hold land in the Province to obtain a licence in mortmain. This applies largely to federally incorporated companies. The second part of the statute concerns charitable uses and provides, very broadly, that a charitable trust or organization, whether or not it is incorporated, and subject to certain exceptions, may not hold land for more than two years unless it obtains the consent of a Supreme Court judge. Otherwise the land vests in the Public Trustee who is directed by the Act to sell it and transfer the net proceeds of the sale to the charity.

9. *The Mortmain and Charitable Uses Act* has caused difficulties in recent years and has been described variously as a carry-over from feudal times and an anachronism. Although the Select Committee on Company Law in its Interim Report, 1967, recommended the repeal of the entire statute, its retention has been supported by others because it serves as an indirect method of monitoring foreign ownership of land.

10. The Commission's research on this reference is under the capable direction of Professor A. H. Oosterhoff, Faculty of Law, University of Western Ontario.

THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

(a) — COMPLETED PROJECTS

The International Convention Providing a Uniform Law on the Form of the International Will

11. Pursuant to section 2 (1) (a) of *The Ontario Law Reform Commission Act*, the Commission initiated a study of the International Convention Providing a Uniform Law on the Form of the International Will drawn up by the Diplomatic Conference on Wills, Washington, D.C., October 16-26, 1973. The Chairman of the Commission was appointed by the Government of Canada to act as chief of the Canadian delegation at this Conference.

12. Testamentary succession with international implications is no new thing. The ownership by Canadian nationals and provincial domiciliaries of assets situated abroad is now commonplace and its incidence increasing. Conversely, the heterogeneity of our people and the attractions which this country offers to the foreign investor combine to make testamentary succession a matter of primary importance in private international law.

13. It was thought for some time that the existence of wide variation in the rules of law affecting the formal validity of wills would prove to be an obstacle in the settling of a single form of will which would gain wide international acceptance, however desirable that result would be.

14. Consequently, states in their internal rules of law and by international convention sought to provide alternative forms of will-making which would be permitted on an equal basis with their own internal modes. Section 19 of the Ontario *Wills Act* accommodates such alternative modes to that provided by section 11 of the Act, but the manner and formalities of making, so far as the will relates to an interest in land in Ontario, are governed by the formalities prescribed in section 11.

15. A more liberal approach to the acceptance of alternative modes of will-making also led to the formulation of an international convention on the conflict of laws rules relating to the formal validity of testamentary dispositions by The Hague Conference on Private International Law in 1961. This Convention has been ratified by thirteen states: Austria, Botswana, France, the Federal Republic of Germany, Ireland, Japan, Mauritius, Poland, South Africa, Swaziland, Switzerland, the United Kingdom, and Yugoslavia. Canada at that time was not a member of The Hague Conference and the absence of an acceptable federal state clause in the Convention makes accession by Canada impossible.

16. This evidence of a more ready acceptance by the signatory states to The Hague Convention of alternative modes encouraged the belief that an attempt should be made to arrive at the removal of conflict of laws concerning formal validity of wills by the more direct route of providing a uniform law on the form of the international will. Not surprisingly, this cause was espoused by the International Institute for the Unification of Private Law (Unidroit) and their efforts were brought to fruition in the concluding of the Convention Providing a Uniform Law on the Form of an International Will by the Diplomatic Conference in October, 1973.

17. The Convention makes provision for the adoption by the signatory states of a uniform law on the form of the international will; the annex to the Convention contains the text of that uniform law; and the Convention is accompanied by a resolution advocating the adoption of a system concerning the safekeeping of international wills.

18. The inclusion in the Convention of a federal state clause makes it possible for the Government of Canada to ratify the Convention at the request of, and on behalf of one or more of the provinces and territories of Canada.

19. The Convention and the Uniform Law on the form of the international will represents a major advance in the international unification of the rules in a vital area of the law respecting succession to property in the estates of deceased persons. Because its provisions are relatively simple, its impact direct, and the nature of the legal prescriptions so closely akin to the

domestic law of Ontario that little change in current practice is required to accommodate the new procedure, the Commission is of the view that it deserves the unqualified support in this jurisdiction and has recommended:

- (1) that the Government of Ontario request ratification on behalf of the Province of Ontario by the Government of Canada of the Convention Providing a Uniform Law on the Form of an International Will; and
- (2) that the Province of Ontario enact the Uniform Law appearing as the Annex to the Convention together with such further provisions as are necessary to give the provisions of the Annex full effect in this Province.

20. At its annual meeting in 1974, the Uniform Law Conference of Canada formulated an amendment to the Uniform Wills Act which, if adopted, would implement the Convention and the Uniform Law on the form of international wills and provide a system for their safekeeping. The proposed implementing legislation has the approval of the Uniformity Commissioners from all provinces and territories in Canada.

(b) — PROJECTS IN PROCESS

(i) *Family Law Project*

21. As indicated previously in this report, the Commission is engaged in the final stages of the preparation of its report on Support Obligations which will be submitted to the Attorney General early in the fiscal year commencing April 1, 1975. The report will deal exhaustively with inter-spousal support obligations under provincial law, whether in the form of alimony as an independent remedy, of maintenance available through summary proceedings under *The Deserted Wives' and Children's Maintenance Act*, and of maintenance with respect to matrimonial causes (apart from divorce) under *The Matrimonial Causes Act*. The text also contains a review and appraisal of the maintenance provisions, as corollary relief, under the *Divorce Act*.

22. The support obligations affecting children have also been subjected to an intensive analysis with a view to their rationalization and reform. The provincial legislation included in this study comprises *The Children's Maintenance Act*, *The Infants Act*, *The Deserted Wives' and Children's Maintenance Act*, *The Child Welfare Act*, and *The Matrimonial Causes Act*; and in the field of federal legislative competence, maintenance as corollary relief under the *Divorce Act*.

23. With the submission of its Report on Support Obligations, the Commission will have substantially completed its work, begun in 1965, on the Family Law Project; and attained its goal of providing the detailed design of a law reform programme which, if implemented, would bring the laws affecting all those in the family relations into closer consonance with the

needs and expectations of contemporary society. That the task should have taken ten years, even if we had been free to pursue it without major though justifiable interruptions, is not surprising. That it could have been accomplished at all, is attributable to the scholarship and devotion of a host of people whose invaluable assistance we now gratefully acknowledge.

(ii) *Law of Property Project*

24. As indicated a year ago, the four current topics in the Law of Property Project are: (a) the law of trusts; (b) the law of mortgages; (c) the basic principles of real property law; and (d) the law of landlord and tenant.

25. In the area of trust law draft reports are in the course of preparation on the following topics: imperfect trust provisions; powers of maintenance and advancement; and restraints on anticipation and on alienation. Work continues on a working paper involving the apportionment of capital and income as between life tenant and remainderman and consideration of the principle of unitrust. During this year we have made a beginning on our review of the law governing the administration of the estates of deceased persons. In the absence of Professor Ralph E. Scane, the whole of the project on the law of trusts has come under the capable direction of Professor Donovan W. M. Waters.

26. During the summer of 1974, Professor A. J. Stewart, Faculty of Law, University of Windsor, on behalf of the Commission and in consultation with representatives of the mortgage lending institutions and members of the legal profession specializing in this area of the law, did a preliminary study for the purpose of identifying current problems; determining whether a full-scale review of the law of mortgages was desirable and necessary; and, if so, establishing the research design of such a project. We have now received Professor Stewart's report and on the basis of the material and findings contained in it, we are prepared to embark on the larger study when financial and personnel resources become available.

27. Although our research personnel continued work this year on the study involving the basic principles of real property law, activity on the preparation of our final report on landlord and tenant law involving commercial and industrial leases and tenancies was interrupted to accommodate the more pressing needs of the other projects in our programme referred to above.

(iii) *The Change of Name Act*

28. In the course of its research and, more particularly, in the initial stages of preparing a draft report on this topic, it became apparent to the Commission that neither the felt inadequacies of the present law nor the solutions suggested for their reform had been delineated clearly enough. The Commission recognizes, of course, the legitimate desire of a growing number of married women for more "flexibility in the use of married or

maiden names" for some purposes. We are concerned, however, with the implications of these practices with respect to the accuracy and reliability of formal record-keeping under vital statistics legislation at both the national and international level, the naming of children, etc. The Commission has arrived at certain tentative conclusions which it plans to publish in a working paper for general circulation and comment before submitting definitive recommendations for legislation.

(iv) Deferred Projects in the Programme

29. Due to pressure of urgent commitments, particularly in relation to family law, the Commission has not been able to complete the task concerning the law of evidence as outlined in our Sixth and Seventh Annual Reports according to our forecasts. The necessary research has been completed and it is anticipated that definite recommendations will be forthcoming during the next fiscal year. For similar reasons the work on the project concerning the enforcement of judgment debts has been deferred. Work on this subject will be resumed this year.

LIAISON WITH OTHER LAW REFORM AGENCIES

30. As in previous years, we were privileged during the past twelve months to receive many visitors from outside our own jurisdiction and to discuss with them common problems of law reform. We are grateful to them all for the pleasure of their visit and the benefit of their experience so richly shared.

31. Representatives of law departments and law reform agencies in Australasia included the Honourable Vernon Wilcox, Q.C., M.P., Attorney General for the State of Victoria; Mr. Robert Watt, Law Reform Commission of New South Wales; Mr. J. F. Keeler, Department of Law, University of Adelaide, South Australia; Dr. Robin Sharwood, Executive Director, Victoria Law Foundation, Melbourne; and Dr. F. J. Northey, Dean, Faculty of Law, University of Auckland, and Member of the New Zealand Law Revision Commission.

32. In June last, we were most pleased to receive a visit from the Right Honourable The Lord Pearson, P.C., C.B.E., Chairman of the Royal Commission on Civil Liability and Compensation for Personal Injury; members of his Commission, Mr. Norman S. Marsh, Q.C., a member of the Law Commission of England and Wales; Mr. Walter Anderson, C.B.E., from the Council of the Trade Union Congress; Mrs. Margaret Brooke, J.P., Vice-Chairman of the National Federation of Women's Institutes; and with them Mr. A. W. Ure, member of the Confederation of British Industries, and Mr. Ken Haddocks, Assistant Secretary to the Commission.

33. The Alberta Board of Review of Provincial Courts visited Toronto in June, 1974 and met with representatives of our Commission. Mr. Justice

W. J. C. Kirby of the Supreme Court of Alberta is Chairman of the Board. He was accompanied by Dr. M. Wyman and Mr. J. E. Bower, both members of the Board, Mr. J. L. Lewis, Counsel, and Mr. Emile Gamache, Secretary.

34. In August, 1974 the Commission was represented by the Chairman and Counsel, Mr. Lyle S. Fairbairn, at a meeting of the law reform agencies of Canada in Winnipeg, Manitoba.

35. On February 11, 1975, we were delighted by a visit from the Honourable Mr. Justice Nicholson of the Supreme Court of Prince Edward Island and Chairman of the Law Reform Commission. Mr. Justice Nicholson is currently seized with the responsibility of studying and reporting on the organization of the courts at all levels in the Island.

36. Through the good Offices of the Honourable Mr. Justice C. L. D. Meares, Chairman of the Law Reform Commission, New South Wales, the Ontario Commission has received an invitation to send a representative to the next Conference of Australian Law Reform Agencies, being held in Sydney on April 2-4, 1975. We are happy that Mr. W. R. Poole, Q.C., a member of our Commission, has consented to attend as our representative at this Conference.

ACKNOWLEDGMENTS

37. Annexed hereto as Appendix A is a list of the reports which have been prepared and submitted by the Commission since its inception in 1964, and the extent to which our recommendations have found their way into legislation. During this year, members of the Commission and our staff have responded to a large number of invitations to address groups interested in the work of the Commission and its reports, particularly the Report on Family Law, Part IV — Family Property Law.

38. Annexed hereto as Appendix B is a list of the officers and permanent staff of the Commission. We extend a hearty welcome to those who have joined our ranks this past year: Miss C. H. MacLean, B.A., LL.B., and Mr. R. S. G. Chester, B.A. (Hons. Juris.), as members of the legal research staff; and Mrs. M. E. Llewellyn and Miss Teresa D. Evans, as members of the administrative staff. To Mrs. Carol Creighton, who has resigned to join the staff of the Ministry, we express our grateful thanks for her scholarly and devoted contribution to our work. Our sincere thanks are also extended to the Secretary, Miss A. F. Chute, and to the administrative staff for their splendid efforts on our behalf this past year.

39. May we also record our thanks and appreciation to you, Mr. Attorney, and the officers of the Ministry for the manner in which we have been sustained and encouraged in our work.

All of which is respectfully submitted.



H. ALLAN LEAL,
Chairman.



JAMES C. MCRUER,
Commissioner.



RICHARD A. BELL,
Commissioner.



W. GIBSON GRAY,
Commissioner.



WILLIAM R. POOLE,
Commissioner.

March 31, 1975

APPENDIX A

REPORTS MADE BY THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Recommendations Implemented by
No. 1 The Rule Against Perpetuities	February 1, 1965	—
No. 1A Supplementary Report on the Rule Against Perpetuities	March 1, 1966	The Perpetuities Act, 1966, Stat. of Ont. 1966, c. 113
No. 2 The Wages Act; Assignment of Wages	March 3, 1965	The Wages Amendment Act, 1968, Stat. of Ont. 1968, c. 142
No. 3 Personal Property Security Legislation	March 28, 1965	—
No. 3A Supplementary Report on Personal Property Security Legislation	May 18, 1966	The Personal Property Security Act, 1967, Stat. of Ont. 1967, c. 72
The Evidence Act; Admissibility of Business Records	February 16, 1966	The Evidence Amendment Act, 1966, Stat. of Ont. 1966, c. 51, s. 1
The Mechanics' Lien Act	February 22, 1966	—
Supplementary Report on The Mechanics' Lien Act	May 26, 1967	The Mechanics' Lien Act, 1968-69, Stat. of Ont. 1968-69, c. 65
Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	—
The Execution Act: Exemption of Goods from Seizure	December 9, 1966	The Execution Amendment Act, 1967, Stat. of Ont. 1967, c. 27
The Law of Condominium	March 6, 1967	The Condominium Act, 1967, Stat. of Ont. 1967, c. 13
Basis for Compensation on Expropriation	September 21, 1967	The Expropriations Act, 1968-69, Stat. of Ont. 1968-69, c. 36
The Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968, Stat. of Ont. 1968, c. 120
Annual Report 1967	January 15, 1968	—
Certain Aspects of the Proposed Divorce Legislation contained in Bill C-187 (Can.)	January 19, 1968	The Divorce Act, Stat. of Can. 1967-68, c. 24, s. 26
The Proposed Adoption in Ontario of the Uniform Wills Act	February 5, 1968	—
The Protection of Privacy in Ontario	September 10, 1968	—

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Report on Motor Vehicle Accident Compensation	November 9, 1973	—
Administration of Ontario Courts, Part III	December 17, 1973	—
Report on Family Law: Part IV — Family Property Law	February 8, 1974	—
Report on Family Law: Part V — Family Courts	February 8, 1974	—
Annual Report 1973	May 6, 1974	—
International Convention Providing a Uniform Law on the Form of the International Will	July 3, 1974	—

APPENDIX B

OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

Chairman	H. Allan Leal, Q.C., LL.M., LL.D.
Vice-Chairman	Honourable James C. McRuer, O.C., LL.D., D.C.L.
Commissioners	Honourable Richard A. Bell, P.C., Q.C. W. Gibson Gray, Q.C. William R. Poole, Q.C.
Counsel	Lyle S. Fairbairn, B.A., LL.B.
Secretary	Miss A. F. Chute
Legal Research Officers	M. A. Springman, B.A., M.A., M.Sc., LL.B. M. P. Richardson, B.A., M.A., LL.B. C. H. MacLean, B.A., LL.B. R. S. G. Chester, B.A. (Juris.)
Administrative Assistant	Mrs. A. E. Harrower
Secretary to Chairman	Mrs. S. Hlynka
Secretary to Vice-Chairman	Mrs. M. E. Williams
Secretary to Counsel	Mrs. D. M. Halyburton
Secretary to Administrative Officer	Mrs. M. E. Llewellyn
Secretaries to Legal Research Officers	Mrs. Cynthia D. Smith Miss Teresa D. Evans
Receptionist	Mrs. B. G. Woodley

NINTH ANNUAL REPORT 1975

ONTARIO INQUIRY COMMISSION

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1975

ONTARIO LAW REFORM COMMISSION



**Ministry of the
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General**



The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act* for the purpose of promoting the reform of the law and legal institutions. The Commissioners are:

H. ALLAN LEAL, Q.C., LL.M., LL.D., *Chairman*
HONOURABLE JAMES C. McRUER, O.C., LL.D., D.C.L.
HONOURABLE RICHARD A. BELL, P.C., Q.C.
W. GIBSON GRAY, Q.C.
WILLIAM R. POOLE, Q.C.

Lyle S. Fairbairn, B.A., LL.B., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are located on the Sixteenth Floor at 18 King Street East, Toronto, Ontario, Canada.

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ONTARIO LAW REFORM COMMISSION

Sixteenth Floor
18 King Street East
Toronto, Ontario
M5C 1C5

To The Honourable R. Roy McMurtry, Q.C.,
Attorney General for Ontario

NINTH ANNUAL REPORT 1975

Dear Mr. Attorney:

We have the honour to present the Ninth Annual Report of the Ontario Law Reform Commission.

INTRODUCTION

1. This report deals with the work of the Commission during the fiscal year April 1, 1975 to March 31, 1976. During these twelve months we have completed four projects and submitted reports on them to the Attorney General. In addition, work continued and substantial progress was made on six projects currently in the programme. This report concerns the details of these activities.

2. In summary, during the last year the Commission has submitted the following four reports:

Report on Family Law,
Part VI, Support Obligations
Report on Mortmain, Charitable Uses
and Religious Institutions
Report on Landlord and Tenant Law
Report on the Law of Evidence

THE PROGRAMME: REFERRED MATTERS

3. Section 2(1)(d) of *The Ontario Law Reform Commission Act* requires the Commission to inquire into and consider any matter relating to any subject referred to it by the Attorney General. No new matters were referred to the Commission during the period covered in this report. Work on one prior reference, *The Mortmain and Charitable Uses Act*, was completed during the year and substantial progress was made on the other remaining reference, the Sale of Goods Project.

(a) — COMPLETED PROJECTS

The Mortmain and Charitable Uses Act and The Religious Institutions Act

4. By letter dated May 14, 1974, the then Attorney General, the Honourable Robert S. Welch, Q.C., directed a reference to the Commission asking it:

to examine, study and enquire into the past, present and future utility and effectiveness of The Mortmain and Charitable Uses Act and The Religious Institutions Act, and, after study and consideration, to recommend such changes in the law relating to these Acts as in the opinion of the Ontario Law Reform Commission are necessary and/or desirable.

5. Historically, mortmain legislation dealt with the device of licensing the holding of land by corporations. Corporations never die and for reasons of taxation and control of wealth, it was thought necessary from the middle ages onwards to exercise rigid supervision over the

amount and duration of ownership of land by these institutions. *The Mortmain and Charitable Uses Act* is comprised of two distinct parts: a part concerning mortmain which applies to corporations and requires all corporations which have no other authority to hold land in the Province to obtain a licence in mortmain. This applies largely to federally incorporated companies. The second part of the statute concerns charitable uses and provides, very broadly, that a charitable trust or organization, whether incorporated or not, and subject to certain exceptions, may not hold land for more than two years unless it obtains the consent of a Supreme Court judge. Otherwise the land vests in the Public Trustee who is directed by the Act to sell it and transfer the net proceeds of the sale to the charity.

6. *The Mortmain and Charitable Uses Act* has caused difficulties in recent years and has been described as an anachronistic survival from feudal times. Although the Select Committee on Company Law in its Interim Report, 1967, recommended the repeal of the entire statute, its retention has been supported by others because it serves as an indirect method of monitoring foreign ownership of land.

7. It would appear, as a result of the decision of the Supreme Court of Canada in *Morgan v. Attorney General for P.E.I.* (1975), 55 D.L.R. (3d) 527, that it is open to the Province, if thought desirable, to deal directly with the question of foreign ownership of land and the indirect and largely ineffectual device of using mortmain legislation for this purpose is no longer necessary.

8. As a consequence, the Commission has made the following recommendations:

- (1) The mortmain provisions of *The Mortmain and Charitable Uses Act* should be repealed in their entirety and, if thought to be desirable, they should be replaced with a monitoring scheme that is integrated with that in effect with respect to extra-provincial corporations.
- (2) If as a matter of government policy it is decided that a system of controls on landholding by non-resident corporations and other entities is desirable (a matter which is outside the terms of the Reference) such a system should be established by new legislation, rather than by a continuance and "shoring-up" of *The Mortmain and Charitable Uses Act*.
- (3) If as a matter of government policy it is thought desirable to continue to restrict direct investment in land by charities, the charitable uses provisions of the Act should be repealed and replaced with new and simpler legislation to achieve that purpose. Such legislation might either form a separate Act or be incorporated into *The Charitable Gifts Act*. A consolidation of *The Charitable Gifts Act*, *The Charities Accounting Act*, and any retained sections related to chari-

table uses of *The Mortmain and Charitable Uses Act* is desirable.

- (4) The administration, regulation and monitoring of charities should be reviewed by an appropriate body and legislation drafted requiring regular disclosures and publication of information concerning all charities.
- (5) The following consequential amendments and repeals should be made:
 - (a) The first sentence of section 4 of *An Act Respecting Real Property (Quia Emptores)*, R.S.O. 1897, c. 330 (R.S.O. 1970, Appendix A) should be repealed.
 - (b) Section 43 of *The Registry Act*, R.S.O. 1970, c. 409, should be repealed.
 - (c) Section 97 of *The Land Titles Act*, R.S.O. 1970, c. 234, should be amended to exclude any reference to a licence in mortmain.
- (6) Consideration should be given to the enactment of an amendment to *The Business Corporations Act* similar to section 306 of *The Corporations Act*, requiring the sale of land within seven years after it is no longer required for actual use of a corporation or for carrying on its undertaking.
- (7) Provision should be made for the automatic reversion of land in charities or their trustees, where the land has vested in the Public Trustee but has not yet been sold by him. The provision should be retroactive so as to apply to cases where the charity has disposed of the land to a third party. Such a provision should be enacted whether or not divestment provisions similar to the existing ones are to be incorporated into any new legislation, thereby curing defective titles at the date of the enactment.

9. In the event that *The Mortmain and Charitable Uses Act* is to be retained, the Commission has made detailed recommendations for its substantial amendment. These are dealt with in the report as alternative proposals.

10. In general, *The Religious Institutions Act* sets out a statutory scheme under which religious societies or congregations may, through the simple device of appointing trustees, arrange to acquire, mortgage, sell or otherwise deal with land for religious or congregational purposes. Thus the necessity of incorporation and corporate administration is avoided. By express terms, however, the convenient and remedial procedures of the legislation are open only to congregations of Christians and Jews. While no doubt acceptable when originally passed, the legislation seems unduly restrictive and deficient in the modern pluralistic society of Ontario and, understandably, there have been some requests to extend the applicability of the legislation to other religious sects.

11. The report recommends that *The Religious Institutions Act* be replaced by new legislation for the same purpose which would be generally applicable to all religious societies. The Commission's detailed recommendations, which include the suggested repeal of some provisions, the amendment of others and modernization of obscure language in the statute, are embodied in a draft bill entitled *The Religious Societies Act* which is annexed as Appendix A to the report.

(b) — PROJECTS IN PROCESS

Sale of Goods Project

12. In its report one year ago, the Eighth Annual Report 1974, the Commission set forth the specific topics covered in the research design for the Sale of Goods Project. In all twenty-six working papers have been prepared and considered by the research team and their report based on this review and analysis was submitted to the Commission in August, 1975. Since that date the Commission has devoted its attention and as much time as was available to consider the report of the research team with a view to settling all relevant policy issues and the preparation of a final report to the Attorney General. During these discussions it has become increasingly apparent that some remedial measures are required beyond the law of sales, and it is anticipated that, on the completion of the report on the law of sales, the Commission may wish to turn its attention to the general law of contract and the formulation of legislation to amend the general law of contract, plus the reform of other legislation which would provide the basis for an updated mini commercial code. The Commission is now at work on the completion of its report to the Minister on the reform of *The Sale of Goods Act*.

THE PROGRAMME: PROJECTS INITIATED
BY THE COMMISSION

(a) — COMPLETED PROJECTS

(i) *Family Law Project*

Part VI — Support Obligations

13. The Report on Support Obligations is the sixth in the series of reports arising out of our work in the Family Law Project. In this report we present approximately one hundred and fifty recommendations directed toward a root and branch reform of the substantive law and enforcement procedures of the law of support obligations falling within provincial legislative competence: alimony in the Supreme Court; maintenance in the Supreme Court apart from divorce; maintenance as awarded in the Provincial Court (Family Division) under *The Deserted Wives' and Children's Maintenance Act*; and the various provincial statutes dealing with the support of children. The report also contains an exhaustive review of the jurisdictional problems that continue to plague this area of the law due to the constitutional limitations on the powers of

the provincial legislatures to enact legislation concerning maintenance obligations, in view of the provisions of the *Divorce Act*; and the restricted powers to make orders concerning maintenance obligations that the provincial legislatures can confer on Family Court judges appointed by the Lieutenant Governor in Council. Constitutional references, at both the provincial and federal levels, are invited in order that these difficult questions may be resolved.

With the submission of the Report on Support Obligations, the Commission has substantially completed its work on the Family Law Project. In it we have endeavoured to provide the detailed design of a law reform programme which, if implemented, would bring the law governing family relations into closer consonance with the needs and expectations of contemporary society. The task has been a long and difficult one, and has been accomplished only as a result of the scholarship and dedication of a great many people whose invaluable assistance we gratefully acknowledge.

(ii) *The Law of Landlord and Tenant*

14. In 1968 the Commission submitted a Report entitled *Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies*, which contained a series of recommendations aimed at achieving a fairer balance of rights and obligations between landlords and tenants of residential premises. The concern of the Commission was to redress the imbalance which existed in the law in favour of landlords, an imbalance resulting from the law's preoccupation with rigid property principles of feudal origin and the failure of the common law of landlord and tenant over the centuries to develop a coherent philosophy based on a theory of vital interests.

15. Part IV of *The Landlord and Tenant Act*, applicable to residential tenancies, was enacted in 1969, implementing most of the recommendations contained in the *Interim Report*. The legislation created certain rights considered as being vital to tenants, such as the right to rent premises which would be maintained by the landlord in a good state of repair, the right to privacy, and the right to have questions relating to the recovery of possession adjudicated by a judge in the first instance. Certain obligations were also imposed upon tenants, such as the requirement to maintain the rented premises in a state of ordinary cleanliness. In 1972 the Commission submitted a further Report dealing with certain questions which had arisen out of the administration of Part IV of the Act, which in turn led to further amendments being made to *The Landlord and Tenant Act*.

16. The Commission in the current year completed and submitted its third and final report on the law governing the relation of landlord and tenant. The Report is composed of four Parts. Part I is concerned with certain aspects of the law of landlord and tenant applicable to tenancies of both residential and non-residential premises. Some of the subjects dealt with in this Part, while of a largely technical nature and thus possi-

bly of more immediate concern to lawyers than to landlords and tenants, cannot be ignored if landlord and tenant law is to be made more relevant to contemporary social and economic needs. These subjects create the substantive framework within which tenancy agreements operate. They include: the nature of the landlord and tenant relation; the formal requirements of tenancy agreements; the law relating to the running of covenants; the effect of merger or surrender of the reversion; attornment; waiver; obligation to show title; defective tenancy agreements; the renewal of tenancy agreements on behalf of persons outside Ontario; the rights of the parties upon a tenant's insolvency; fixtures; the covenant for quiet enjoyment; termination of the tenancy of a disruptive tenant; relief from the operation of restrictive covenants; the obligation to repair; abandoned chattels; *The Short Forms of Leases Act*; the independence of covenants in a tenancy agreement; tenants' rights prior to possession; mitigation of damages; covenants relating to things in being and things not in being; the obligation to deliver a copy of the tenancy agreement; and the termination of tenancies.

17. Part II of the Report is concerned with an examination of certain aspects of the law relating specifically to non-residential tenancies. In the *Interim Report* we indicated that in some important aspects residential and commercial tenancies require different treatment and that commercial tenancies should be the subject of a separate examination. For this reason, the *Interim Report* was confined to an examination of the legal, social and economic factors affecting residential tenancies only and we did not attempt in that Report to draw any conclusions or make any recommendations with respect to non-residential tenancies. In Part II of this Report consideration is given to certain subjects dealt with in the *Interim Report*, such as the law of distress, security deposits and so on, in relation to non-residential tenancies and in the context of the legal, social and economic factors affecting such tenancies. In considering the possibilities for law reform in this area, we benefited greatly from the experience of a number of landlords and tenants of commercial and industrial premises, as well as various government officials, and others associated with agricultural tenancies all of whom gave us their views. The recommendations contained in Part II are not confined to commercial and industrial tenancies but are referable to all tenancies except residential tenancies. Thus they are intended to apply to tenancies of land used for agricultural purposes.

18. Part III of the Report is concerned with the question of a standard form tenancy agreement for use in the case of residential tenancies. The Commission has decided to recommend the adoption of a standard form tenancy agreement, as well as the adoption of supplementary material to be attached to this agreement. The reasons for this decision, including a specific form of tenancy agreement and of supplementary material, are contained in this Part.

19. Part IV of the Report contains a summary of recommendations and conclusion.

20. During the terminal stages of the preparation of the Report the Commission was aware of, but not directly involved in, the major developments in the area of residential tenancies concerning security of tenure and rent review which have been given legislative expression in *The Landlord and Tenant Amendment Act, 1975* and *The Residential Premises Rent Review Act, 1975*. We are of the view that there is no need for comment on legislation so recently enacted. We would simply point out that the recommendations contained in this Report, with the exception of those dealing with termination of tenancies, are unaffected by the new law.

21. With the submission of the third and final report, the work of the Commission with respect to the law governing the relation of landlord and tenant has been completed.

(iii) *The Law of Evidence*

22. Pursuant to the provisions of section 2(1)(a) of *The Ontario Law Reform Commission Act*, the Commission authorized a research project on the law of evidence concerning those matters over which the Legislature has jurisdiction. The function of the project was to examine the present law of evidence within the Province and to suggest reforms which would preserve the sound and established principles of the law of evidence, yet adapt that law where necessary to cope with the changing conditions of modern society. The project required a critical examination of the rules of evidence in civil proceedings, in prosecutions for provincial offences and, to the extent that such proceedings are not governed by the provisions of other Acts, of the rules of evidence in proceedings before tribunals or investigatory bodies acting under statutory authority.

23. After a careful review of these matters, we remain convinced that the common law approach to evidence is basically sound, and that it would be unwise to reform the law in radically new directions, alien to the tradition of the common law, for example, by leaving the admissibility of evidence solely to the judgment of individuals presiding in particular cases. There must be guidelines which control the admissibility of evidence, but the guidelines must be such that they will not defeat the tribunal in its search for truth.

24. Often the law has shown itself out of touch with modern life, indeed at times out of touch with common sense. For example, in *Myers v. D.P.P.*, [1965] A.C. 1001, records of automobile engine numbers systematically recorded on the assembly line were held to be inadmissible in evidence at common law. It was held that such a record was hearsay evidence. In *Goody v. Odhams Press Ltd.*, [1967] 1 Q.B. 333, an action for defamation based on a newspaper article in which a convicted person was referred to as a robber, it was held that proof of the robbery conviction was no evidence that he was a robber. Such examples show that some of the rules of evidence do not commend themselves to the wisdom of the layman.

25. In the report which we have submitted we recommend a number of specific amendments, both to the common law and to statute law. We have prepared a new draft *Evidence Act*, patterned upon *The Evidence Act* currently in force; our Draft Act contains the major portion of our recommendations together with many sound provisions from the present Act. We have thought it desirable to codify some of the common law, but we do not think it would be wise to attempt to prepare an exhaustive and comprehensive code of evidence. In our view, this would give rise to a whole new course of judicial interpretation creating much uncertainty about the precise meaning of words and phrases used in such a code, a development which could seriously disrupt the administration of justice. The better course, as we see it, is to codify and consolidate where necessary and desirable, but to leave ample room for the organic growth of the common law to meet future conditions which cannot be foreseen. Throughout the history of the law, rules of evidence have been closely associated with guarantees of procedural justice. Our report on evidence has been guided by the recognition that sound, balanced, and reasonable rules of evidence are vital to the conduct of a fair hearing.

26. We have endeavoured to prepare a concise statute that is sufficiently comprehensive to meet most daily requirements in the administration of justice and to rationalize the rules of evidence with modern concepts of proof. We seek to reduce as far as possible forensic debate on what is, or is not, admissible in the average cases over which the Legislature has constitutional jurisdiction. There will be some unusual cases that will arise from time to time that will require extensive research and debate, but we trust that these will be unusual indeed.

27. With the submission of this report the Commission has concluded its work in the Law of Evidence Project.

(b) — PROJECTS IN PROCESS

(i) *Law of Property Project*

28. During the past year the four topics under review in the Law of Property Project were: (a) the law of landlord and tenant; (b) the law of trusts; (c) the basic principles of real property law; and (d) the law of mortgages.

(a) *The Law of Landlord and Tenant*

29. Reference has already been made to the completion and submission of the final report in the law of landlord and tenant.

(b) *The Law of Trusts*

30. The Commission's review of *The Trustee Act* and associated statutes is continuing under the capable direction of Professor Donovan W. M. Waters. Research papers have been completed and considered by the Commission with respect to trusts of imperfect obligation; powers of maintenance and of advancement; restraints on anticipation and on alien-

ation; the private retirement, removal and appointment of trustees; the Ontario *Settled Estates Act*; trustees' administrative powers; and trustees' powers of investment. In the coming year 1976-1977, the Commission will be considering the apportionment of capital and income as between life tenant and remainderman; the fundamental duties of trustees (delegation, conflict of interest and duty, and standard of care); protection and indemnity of trustees; powers of the court; and the conflict of laws. On completion of its report on the law of trusts the Commission will turn its attention to a review of the law governing the administration of estates of deceased persons.

(c) *The Basic Principles of Real Property Law*

31. As the year opened, Professor D. Mendes da Costa, our research supervisor on this difficult topic, submitted his comprehensive Second Report on Basic Principles of Land Law in which he reviewed, at length, the various rules and principles of Ontario land law which were fashioned from the feudal framework of English common law and statutory provisions dealing with interests in land. The research paper contains recommendations for fundamental reform of the law concerning the ownership and transfer of interests in land, including a proposal for the abolition of legal future interests entirely. The Commission has these proposals under consideration at the present time and will then turn to the preparation of its final report.

(d) *The Law of Mortgages*

32. The Commission has embarked on a broad study of the law of mortgages and for this purpose has retained the services of Professor W. B. Rayner, Faculty of Law, University of Western Ontario. Professor Rayner is the editor of the new edition of *Falconbridge on Mortgages*.

(ii) *The Hague Convention Concerning the International Administration of the Estates of Deceased Persons*

33. The Commission has already committed itself to playing a part in the preparation and implementation of international conventions for the reform of the law wherever the subject is one where the need for reform is clear, where international action offers the best prospects of success, and where the subject matter of the convention falls within the legislative competence of the Legislature. A year ago a report was submitted recommending the enactment of the necessary legislation and that the Government of Ontario request accession on behalf of the Province of Ontario by the Government of Canada of the International Convention Providing a Uniform Law on the Form of the International Will.

34. As a companion piece to this international treaty, the Commission now has under consideration The Hague Convention Concerning the International Administration of the Estates of Deceased Persons (1972) and its final report is in course of preparation.

(iii) *The Enforcement of Judgment Debts*

35. The Enforcement of Judgment Debts Project is divided into three major parts: (1) the present enforcement processes with an identification and analysis of their procedural shortcomings; (2) alternative approaches to the enforcement of judgment debts including the proposal for the establishment of a service and enforcement office, the existing office of the referee, the federal trustee in bankruptcy, and the provincial debtor assistance boards; and (3) priorities in the payment of judgment debts.

36. We anticipate that the research will be completed by mid-year and the Commission will then begin the preparation of its final report.

(iv) *Change of Name*

37. In our annual report a year ago, we made reference to the fact that in the course of its research and, more particularly, in the initial stages of preparing a draft report, it became apparent that neither the felt inadequacies of the present law nor the solutions suggested for their reform had been delineated clearly enough. To achieve the fullest possible exchange of views on these two vital issues the Commission, in October, 1975, prepared and gave wide circulation to a study paper entitled *A Woman's Name*. After a presentation of the existing law, the study paper set forth eleven questions designed to focus attention on the relevant issues and invited direct response to them.

38. The replies were encouraging and helpful though somewhat delayed by the vagaries of the mails during the postal dispute. We also derived great benefit from the views of the members of the Ontario Status of Women Council at a meeting with our representatives arranged for this purpose. The Commission has considered these further representations and is now preparing its final report.

(v) *The Impact of Divorce on Existing Wills*

39. In consequence of representations made to it that a number of ex-spouses have been the unintended recipients of windfall benefits resulting from their former spouses' neglect to alter a will following divorce, the Commission has undertaken a study of the possible amendment of *The Wills Act* to avoid this result. Legislation to this effect has already been enacted or proposed in other common law jurisdictions, both in Canada and the Commonwealth, and we are making a comparative study of this problem.

(vi) *Future Programme*

40. In the task of finishing the projects now in process, as discussed in this report, the Commission will have a substantial workload not only for the immediate future but also for a period extending beyond the next fiscal year. With the conclusion of some major projects, however, and the end being in sight for the completion of others, the Commission has turned its attention recently to a consideration of projects which have

been deferred and which might now be taken under active review, as well as new projects which might be taken into its programme. As was said on a recent occasion by Sir Samuel Cooke, the Chairman of the English Law Commission, the problem is not one to find the things which need doing, but rather to select from an enormous field the things which need doing most. The Commission remains open to suggestions in this regard.

LIAISON WITH OTHER LAW REFORM AGENCIES

41. We were pleased to learn of the establishment this year of a Law Reform Committee of the Ontario Branch, Canadian Bar Association, and that the Association, through this Committee, would welcome closer working relations with the Commission. Mr. Lee K. Ferrier of Toronto has been appointed Chairman of the Committee and has already met with representatives of the Commission with a view to establishing procedures for closer consultation which we believe will prove to be advantageous to the work of both groups.

42. As in previous years, we were privileged during the past twelve months to receive many visitors from outside our own jurisdiction and to discuss with them common problems of law reform. We are grateful to them all for the pleasure of their visit and the benefit of their experience so richly shared. Representatives were the Honourable Mr. Justice W. B. Campbell, Chairman of the Remuneration Tribunal and sole member of the Academic Salaries Tribunal, and Mr. F. C. Boyle, Secretary of the Tribunal, from Australia; Mr. Anthony Lucky, Secretary, The Law Commission of Trinidad and Tobago; Ms. Rita MacDonald, Commissioner, and Professor David Cruickshank, Research Director of The Family and Children's Law Commission of British Columbia; Mr. Arthur L. Close, Counsel, the Law Reform Commission of British Columbia; Mr. John Bishop, the Law Reform Commission of New South Wales; Professor W. D. MacDonald, College of Law, University of Florida; and Mr. G. D. S. Taylor, Downing College, Cambridge.

43. In August, 1975 the Commission was represented by the Chairman and Counsel, Mr. Lyle S. Fairbairn, at a meeting of the Canadian law reform agencies in Halifax, Nova Scotia, and immediately following this meeting the Chairman represented the Commission at the regular annual meeting of the Uniform Law Conference of Canada in the same city. The work of the Uniform Law Conference continues to bear a very close affinity with that of the Canadian law reform agencies. The work of the annual meeting of the Uniform Law Conference involves a full week of intensive application, but there can be no doubt that this exercise is of fundamental importance and relevance to the personnel and programmes of the law reform agencies and we trust that the Uniformity Commissioners derive some benefit from the presence of the law reformers as well.

ACKNOWLEDGMENTS

44. Annexed hereto as Appendix A is a list of the reports which have been prepared and submitted by the Commission since its inception in 1964, and a revised statement this year of the extent to which our recommendations have found their way into legislation. We have also attempted to indicate where the recommendations of the Commission are relevant to the various enactments even though legislation would appear not to have been based directly upon our recommendations.

45. Annexed hereto as Appendix B is a list of the officers and permanent staff of the Commission. We extend a hearty welcome to Catherine Wolhowe who has joined the staff of our legal research this year; and express our thanks to the Secretary, Miss A. F. Chute and the administrative staff for their devoted service.

46. May we also record our thanks and appreciation to you, Mr. Attorney, and the officers of the Ministry for the manner in which we have been sustained and encouraged in our work.

CONCLUSION

47. The debate about the proper limits and activities of law reform bodies continues apace. For those who still search for a sign we would simply re-echo the words of Lord Gardiner, a man responsible more than most for the recent revival of an interest in the gentle art, and science, of law reform:

That so much of my time has been devoted to law reform is not a matter on which I have any regrets. My motive has not been that of a lawyer interested in the law as such, although I am. My motive has been a hatred of injustice. I can't bear seeing anomalies in our law cause injustice. I have wanted to see them put right.

All of which is respectfully submitted.



H. ALLAN LEAL,
Chairman.




JAMES C. McRUER,
Commissioner.



RICHARD A. BELL,
Commissioner.



W. GIBSON GRAY,
Commissioner.



WILLIAM R. POOLE,
Commissioner.

March 31, 1976

APPENDIX A

REPORTS MADE BY THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Recommendations Implemented by
No. 1 The Rule Against Perpetuities	February 1, 1965	The Perpetuities Act, 1966, S.O. 1966, c. 113
No. 1A Supplementary Report on the Rule Against Perpetuities	March 1, 1966	<i>do.</i>
No. 2 The Wages Act; Assignment of Wages	March 3, 1965	The Wages Amendment Act, 1968, S.O. 1968, c. 142
No. 3 Personal Property Security Legislation	March 28, 1965	The Personal Property Security Act, 1967, S.O. 1967, c. 72
No. 3A Supplementary Report on Personal Property Security Legislation	May 18, 1966	<i>do.</i>
The Evidence Act; Admissibility of Business Records	February 16, 1966	The Evidence Amendment Act, 1966, S.O. 1966, c. 51, s. 1
The Mechanics' Lien Act	February 22, 1966	The Mechanics' Lien Act, 1968-69, S.O. 1968-69, c. 65
Supplementary Report on The Mechanics' Lien Act	May 26, 1967	<i>do.</i>
Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	See The Mechanics' Lien Amendment Act, 1975, S.O. 1975, c. 43 The Ministry of Transportation and Communications Creditors Payment Act, 1975, S.O. 1975, c. 44 The Public Works Creditors Payment Repeal Act, 1975, S.O. 1975, c. 45
The Execution Act: Exemption of Goods from Seizure	December 9, 1966	The Execution Amendment Act, 1967, S.O. 1967, c. 27
The Law of Condominium	March 6, 1967	The Condominium Act, 1967, S.O. 1967, c. 13
Basis for Compensation on Expropriation	September 21, 1967	The Expropriations Act, 1968-69, S.O. 1968-69, c. 36
The Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968, S.O. 1968, c. 120
Annual Report 1967	January 15, 1968	—
Certain Aspects of the Proposed Divorce Legislation contained in Bill C-187 (Can.)	January 19, 1968	The Divorce Act, S.C. 1967-68, c. 24, s. 26
The Proposed Adoption in Ontario of the Uniform Wills Act	February 5, 1968	—

Title	Date of Report	Recommendations Implemented by
The Protection of Privacy in Ontario	September 10, 1968	See The Consumer Reporting Act, 1973, S.O. 1973, c. 97
The Insurance Act, R.S.O. 1960, c. 190, s. 183, as amended S.O. 1961-62, c. 63, s. 4 (commutation)	October 3, 1968	—
Trade Sale of New Houses and the Doctrine of Caveat Emptor	October 4, 1968	—
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	The Landlord and Tenant Amendment Act, 1968-69, S.O. 1968-69, c. 58
Limitation of Actions	February 3, 1969	See The Highway Traffic Amendment Act, 1975 (No. 2), S.O. 1975, c. 37 The Fatal Accidents Amendment Act, 1975, S.O. 1975, c. 38 The Trustee Amendment Act, 1975, S.O. 1975, c. 39
Annual Report 1968	April 7, 1969	—
The Age of Majority and Related Matters	May 12, 1969	The Age of Majority and Accountability Act, 1971, S.O. 1971, c. 98
Status of Adopted Children	June 3, 1969	The Child Welfare Amendment Act, 1970, S.O. 1970, c. 96, s. 23; and see The Child Welfare Amendment Act, 1975, S.O. 1975, c. 1
Report on Family Law: Part I — Torts	November 4, 1969	The Family Law Reform Act, 1975, S.O. 1975, c. 41 (partial implementation)
Report on Section 20 of The Mortgages Act	March 12, 1970	The Mortgages Amendment Act, 1970, S.O. 1970, c. 54, s. 1
Report on Family Law: Part II — Marriage	April 6, 1970	The Civil Rights Statute Law Amendment Act, 1971, S.O. 1971, c. 50, s. 55 (partial implementation)
Annual Report 1969	April 20, 1970	—
Report on Actions Against Representatives of Deceased Persons	November 30, 1970	The Trustee Amendment Act, 1971, S.O. 1971, c. 32, s. 2
The Coroner System in Ontario	January 25, 1971	The Coroners Act, 1972, S.O. 1972, c. 98
Sunday Observance Legislation	February 26, 1971	The Retail Business Holidays Act, 1975, S.O. 1975 (2nd Session), c. 9
Land Registration	March 23, 1971	—
Annual Report 1970	March 31, 1971	—

Title	Date of Report	Recommendations Implemented by
The Change of Name Act	May 31, 1971	The Change of Name Amendment Act, 1972, S.O. 1972, c. 44
Section 16, The Mortgages Act	June 18, 1971	—
Development Control	September 28, 1971	The Planning Amendment Act, 1973, S.O. 1973, c. 168, s. 10
Powers of Attorney	January 11, 1972	—
Occupiers' Liability	January 11, 1972	—
Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
Review of Part IV of The Landlord and Tenant Act	March 31, 1972	The Landlord and Tenant Amendment Act, 1972, S.O. 1972, c. 123
Annual Report 1971	March 31, 1972	—
The Non-Possessory Repairman's Lien	October 4, 1972	—
Administration of Ontario Courts, Part I	February 26, 1973	See The Administration of Courts Project Act, 1975, S.O. 1975, c. 31
Annual Report 1972	March 31, 1973	—
Administration of Ontario Courts, Part II	May 23, 1973	See The Administration of Courts Project Act, 1975, S.O. 1975, c. 31
Report on Family Law: Part III — Children	September 25, 1973	The Child Welfare Amendment Act, 1975, S.O. 1975, c. 1 (partial implementation)
Report on The Solicitors Act	September 28, 1973	—
Report on Motor Vehicle Accident Compensation	November 9, 1973	—
Administration of Ontario Courts, Part III	December 17, 1973	The Judicature Amendment Act, 1975, S.O. 1975, c. 3 (partial implementation); and see The Administration of Courts Project Act, 1975, S.O. 1975, c. 31
Report on Family Law: Part IV — Family Property Law	February 8, 1974	See The Family Law Reform Act, 1975, S.O. 1975, c. 41 (partial implementation)
Report on Family Law: Part V — Family Courts	February 8, 1974	See The Administration of Courts Project Act, 1975, S.O. 1975, c. 31
Annual Report 1973	May 6, 1974	—
International Convention Providing a Uniform Law on the Form of the International Will	July 3, 1974	—
Annual Report 1974	March 31, 1975	—

Title	Date of Report	Recommendations Implemented by
Report on Family Law: Part VI — Support Obligations	April 18, 1975	—
Mortmain, Charitable Uses and Religious Institutions	February 27, 1976	—
Landlord and Tenant Law	March 15, 1976	—
The Law of Evidence	March 29, 1976	—

APPENDIX B

OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

Chairman	H. Allan Leal, Q.C., LL.M., LL.D.
Vice-Chairman	Honourable James C. McRuer, O.C., LL.D., D.C.L.
Commissioners	Honourable Richard A. Bell, P.C., Q.C. W. Gibson Gray, Q.C. William R. Poole, Q.C.
Counsel	Lyle S. Fairbairn, B.A., LL.B.
Secretary	Miss A. F. Chute
Legal Research Officers	M. A. Springman, B.A., M.A., M.Sc., LL.B. M. P. Richardson, B.A., M.A., LL.B. R. S. G. Chester, B.A. (Hons. Juris.) C. G. Wolhowe, B.A., J.D.
Administrative Assistant	Mrs. A. E. Harrower
Secretary to Chairman	Mrs. S. Hlynka
Secretary to Vice-Chairman	Mrs. M. E. Williams
Secretary to Counsel	Mrs. D. M. Halyburton
Secretary to Administrative Officer	Mrs. B. G. Woodley
Secretaries to Legal Research Officers	Mrs. Cynthia D. Smith Mrs. Teresa D. Loughlin
Receptionist	Mrs. Anne David

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Ministry of the
Attorney
General

TENTH ANNUAL REPORT

1976

ONTARIO LAW REFORM COMMISSION



Ministry of the
Attorney
General



The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act* to further the reform of the law, legal procedures and legal institutions. The Commissioners are:

HONOURABLE GEORGE A. GALE, Q.C., LL.D.

HONOURABLE RICHARD A. BELL, P.C., Q.C.

W. GIBSON GRAY, Q.C.

HONOURABLE JAMES C. MCRUER, O.C., LL.D., D.C.L.

WILLIAM R. POOLE, Q.C.

M. Patricia Richardson, M.A., LL.B., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are located on the Sixteenth Floor at 18 King Street East, Toronto, Ontario, Canada.

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**Ontario
Law Reform
Commission**

To The Honourable R. Roy McMurtry, Q.C.
Attorney General for Ontario

Dear Mr. Attorney:

We have the honour to present the Tenth Annual Report of the Ontario Law Reform Commission, for the period April 1, 1976 to March 31, 1977.

INTRODUCTION

This report deals with the activities of the Commission during the period April 1, 1976 to March 31, 1977. During the last year we have completed work on two projects, Changes of Name and The Impact of Divorce on Existing Wills, and have published final reports on both topics. We have also submitted to the Attorney General an Interim Report on the Orderly Payment of Debts as a discussion document during the formulation of an Ontario response to the proposed federal Bankruptcy Bill. This document has not been published, but will form part of our final Report on the Enforcement of Judgment Debts. In addition, work continued and substantial progress was made on ten other projects currently in our programme.

It has been a year of change. Change and the evolving role of law in society forms the continuing focus of our work. More immediate and personal than this ongoing concern have been the changes in the personnel of the Commission which took place during the year. On February 8, 1977, the Premier of Ontario, the Honourable William G. Davis, Q.C., announced the appointment of the former Chief Justice of Ontario, the Honourable George Alexander Gale, Q.C., LL.D., as Vice Chairman of the Ontario Law Reform Commission. Mr. Gale succeeds as Vice Chairman the Honourable James C. McRuer, O.C., LL.D., D.C.L., who had asked to be relieved of his duties as Vice Chairman and who will remain a member of the Commission. On March 18, 1977, the Chairman of the Commission, H. Allan Leal, Q.C., LL.M., LL.D., resigned to assume appointment as the Deputy Attorney General for Ontario.

THE WORK OF LAW REFORM

Tradition is a strong and pervasive force in the legal culture. Bound to the past by respect for the authority of experience, by patterns of argument and styles of thought, the law is often slow to adapt to change in society and the new challenges which that presents. A society changing as rapidly as Canada requires a system of law that is not only responsive to evolving social needs and values, but also able to provide a framework for the maintenance of stability and continuity. Legislative activity and judicial innovation are the conventional methods used to adapt the law to changing social demands. However, within the last fifteen years many legal jurisdictions have concluded that these methods of effecting change in the law need to be supplemented by the development of institutions specifically charged with responsibility for law reform. The Ontario Law Reform Commission, established in May, 1964, was one of the first of these specialized agencies.

The statute establishing the Commission states that our function is to inquire into and consider any matter relating to reform of the law, having regard to the statute law, the common law and judicial decisions, the administration of justice, judicial or quasi-judicial procedures under any Act, or any subject referred to us by the Attorney General. The five Commissioners combine a varied range of experience in the legal profession, including private practice, law teaching, high judicial office and service as a

Minister of the Crown. Unlike some other law reform agencies, the Commission consists of a combination of full-time and part-time members, the part-time members keeping the Commission in touch with professional and other developments throughout Ontario.

Since 1964, our work has been varied and wide-ranging. We have published 52 separate reports containing recommendations for law reform, a large number of which have been implemented. Some reports have been concerned with innovations in the law, devising new laws and legal approaches to new situations; such was the nature of our work on the Law of Condominium and the Protection of Privacy. Much of our work has been concerned with effecting institutional reforms in the machinery of the administration of justice; our Report on the Administration of Ontario Courts and our reports on The Solicitors Act, and The Coroner System in Ontario are examples of this type of work. Yet other studies, such as our Reports on Family Law, have involved a fundamental transformation of existing legal doctrine; many, such as the reports dealing with Motor Vehicle Accident Compensation, Consumer Warranties and Landlord and Tenant Law, have the broadest social impact and importance, potentially affecting the entire population.

During the last thirteen years, as law reform agencies have been established throughout Canada and the Commonwealth, law reform has developed significantly, both as an idea and as an institution. This development has been accompanied by a greater awareness of the need for law reform among both the legal profession and the public. There is a continuing dialogue between law reform commissions and the public, and an exchange of ideas between law reform commissions themselves, both of which are challenging and valuable. Law reform has become a collaborative enterprise involving the public, profession, government and legislature, an enterprise that is itself continuously evolving and changing. Though we recognize the achievement of the past, we look forward to new challenges and projects.

REPORTS DURING 1976-1977

(a) *Changes of Name*

Our Report on Changes of Name was tabled in the Ontario Legislature on November 10, 1976. The project on Changes of Name began in response to correspondence from organizations such as the Ontario Status of Women Council, the Women's Bureau of the Ministry of Labour and the Federation of Women Teachers of Ontario, drawing our attention to the difficulties facing families, and married women especially, who wished to depart from the prevailing conventions of a wife taking her husband's surname at marriage and that same surname being given to their children. Since existing statutes and government practices did not deal satisfactorily with this situation, we felt it necessary to embark on a study of the provincial law relating to personal names, and in particular *The Change of Name Act*.

From the outset we realized that there were many practical implica-

tions involved in a married woman's choice of name, and that the entire issue concealed a basic conflict of values and interests. We became convinced that it would be unwise to recommend reform until the full implications of the various approaches to reform had been explored, and that in this project public discussion and involvement were vitally important. To promote discussion of the various policy questions being considered, we published a short study paper entitled "A Woman's Name" and made copies available to interested individuals, organizations, businesses and government agencies. As a result, the issues were discussed in the press, on radio and television, and at meetings and conferences, and ultimately we received many helpful comments and submissions.

Our report was divided into two parts: the first dealt with the issues of a married woman's choice of name and the name given to children at birth; the second suggested reforms in court procedures for changing names regulated by *The Change of Name Act*. With respect to the issue of taking a name at marriage our basic recommendation was to allow each spouse, both husband and wife, to have a choice of surname upon marriage, which might be the person's own surname before marriage, or the surname of the person's spouse alone, or a hyphenated combination of both surnames. Subsequent changes of family name, within this basic framework of choice, should be permitted to take place without undue formality, and without an application to court. On the issue of naming children at birth, we recommended that a married couple should be able to give their children the husband's surname, or the wife's surname, or a hyphenated combination of both surnames.

In the second part of the report we considered reform of the general comprehensive procedure for changing names under *The Change of Name Act*. We had received a number of submissions suggesting that changing one's name through court application could be a frustrating, lengthy and expensive process, and that the whole procedure was in need of reform. We re-examined this procedure in an attempt to make it cheaper, simpler, less onerous and less formal, while preserving the general character and safeguards of the legislation. Among other recommendations we suggested that change of name applications should be heard in the family court; that a formal hearing need not be held in all cases; that the number of documents filed should be greatly reduced; and that advertising the change of name should be required only in exceptional cases. Our proposals would streamline and simplify the change of name procedure, doing away with unnecessary and anachronistic formalities, reducing the paperwork involved and easing the burdens of both the applicant and the court.

(b) *The Impact of Divorce on Existing Wills*

Recently, we completed work on a project concerning the Impact of Divorce on Existing Wills, and submitted a report to the Attorney General. This report concerned a fairly limited question: what effect should a subsequent divorce have upon a will made by one of the spouses? Occasionally

ex-spouses have been the unintended recipients of windfall benefits resulting from their former spouses' neglect to alter a will following divorce. Many other legal jurisdictions have noted the potential injustice of this situation and have amended their legislation concerning wills to provide that the subsequent divorce of a testator will operate to modify a prior will. We undertook a study of the need for similar legislative reform in Ontario. Subsequently, we met with representatives of the Ontario Branch of the Canadian Bar Association to discuss the merits of alternative reform proposals.

Our report recommended that *The Wills Act* should be amended to provide that where a testator is divorced, or where his or her marriage has been annulled, after making a will, the will should be read for all purposes as if the former spouse had died before the testator, unless the will expressly provides otherwise. Such an amendment should operate to revoke all dispositions of beneficial interests in favour of the ex-spouse, to revoke provisions conferring a general or special power of appointment on the ex-spouse, and to revoke provisions naming the ex-spouse as executor or trustee. Although the amendment should operate to invalidate the appointment of an ex-spouse to act as trustee for a secret trust, established before the testator's divorce, it should not otherwise interfere with the secret trust. The amendment should apply to all wills of persons dying after the enactment of legislation implementing the reform.

(c) *Enforcement of Judgment Debts Project:
Interim Report on the Orderly Payment of Debts*

On July 21, 1976, we submitted to the Attorney General our Interim Report on the Orderly Payment of Debts. The Interim Report deals with one facet of our larger project on the Enforcement of Judgment Debts: establishing an administrative scheme to assist the overcommitted small debtor. We decided to proceed separately with this topic because, at the time, the Federal Department of Consumer and Corporate Affairs was re-considering Part III of its proposed new Bankruptcy Bill dealing with the orderly payment of debts and wished to take into account the views of interested parties. Although the subjects of bankruptcy and insolvency fall under federal legislative jurisdiction, many aspects of Part III touch upon matters within provincial jurisdiction, and close federal and provincial cooperation is essential if an effective, workable scheme for the orderly payment of debts is to be established.

The Interim Report develops a model scheme for the orderly payment of debts capable of being integrated into the proposed federal Bankruptcy Bill. Our aim was to assist overcommitted small debtors by providing a comprehensive debtor counselling service and enabling them to make arrangements for the re-organization of their debts to be repaid in instalments, fully or partially, over an extended time period. A society that increasingly promotes consumer credit during a period of economic difficulty and restraint generates more and more cases of individual

overindebtedness that require the effective operation of an expert debtor counselling service within an overall strategy for assisting small debtors.

Our recommendations would apply to any overcommitted debtor, including small businessmen, whose debts, excluding debts secured by real property, do not exceed \$20,000, and as such would be available to debtors in all parts of Ontario. The scheme would rely heavily on negotiation and consensual arrangements rather than require courtroom procedure and adversary tactics; it would be inexpensive to administer. The administrator's task would be to assist the debtor by preparing an arrangement which includes a budget for on-going essential living costs of the debtor and his family, and an instalment plan for full or partial payment of the debtor's outstanding debts. Thereafter if the creditors agree to take part in an arrangement, the administrator appointed under the scheme would receive money from the debtor and disburse it to the creditors. The administrator would not be responsible for managing the debtor's affairs as would a trustee in bankruptcy. The debtor must be able to remain in possession of any property he may have, so as to be free to earn income and make payments to the administrator and thus fulfil his obligations under the scheme.

We envisage that the provincial government would be responsible for the on-going administration of the scheme, and for the appointment of Administrators. We think that our proposal is a practical one, simple to administer, and comprehensible to both debtors and creditors in the community. It would provide a basic framework of fairness within which the debtor's financial problems could be solved without either significant loss to the creditor, or continual harassment of the debtor. Comprehensive debtor counselling services would form an integral part of the scheme, serving to educate debtors to recognize the hazards of overcommitment and to work out their personal financial problems.

The proposals contained in our Interim Report were subsequently discussed by appropriate government officials, and were taken into account in formulating Ontario's policy toward Part III of the proposed Bankruptcy Bill. The Interim Report had a specific and somewhat limited immediate objective and our proposals were developed as an alternative model to that set out in the Draft Bankruptcy Bill. Having served that purpose, we intend to incorporate a revised version of the proposals set out in the Interim Report as one chapter of our final Report on the Enforcement of Judgment Debts, placing it in its true context as one part of a comprehensive set of reforms. For this reason we shall not be printing and distributing any copies of the Interim Report.

REFERENCES FROM THE ATTORNEY GENERAL

The statute which established the Commission requires the Commission to inquire into and consider any subject referred to it by the Attorney General. During the last year, we have worked on three such

references, continuing work on the Sale of Goods Project and embarking on research in connection with two references given to us during the last year, the reference on Professional Organizations, and the reference on Class Actions.

(a) *The Sale of Goods Project*

Much of the Ontario law concerning the sale of goods stems basically unaltered from the legal principles of nineteenth century English commercial law, as consolidated in the English Sale of Goods Act, 1893. Since the turn of the century the deficiencies of this body of law have become increasingly apparent with the transformation of Canadian commercial activity. The vast expansion of industrial output and international trade has placed a great strain on rules of law which date from an earlier age. Today much of commercial activity is characterized by disparities in bargaining power, both between consumers and suppliers, and between businessmen themselves. The prevalence of standard form contracts and disclaimer clauses relieving parties from liability is a major factor in contemporary commercial life, yet their existence is largely unrecognized in the formal rules of commercial law. Sensing the inadequacy and irrelevancy of much of commercial law, the American Law Institute sponsored an ambitious project to simplify, clarify and modernize the law governing commercial transactions. This project culminated in the drafting of the Uniform Commercial Code which has been accepted by all the States in the United States with common law traditions. Article 2 of the Uniform Commercial Code deals with sales law and represents the most thorough-going attempt to reform this area of the law.

In February, 1970, the Attorney General asked us to study *The Sale of Goods Act* with a view to assessing its adequacy in the light of contemporary conditions, and to make recommendations for desirable changes. At the request of the Government we gave initial priority to a study of the law of Warranties and Guarantees in the context of Consumer Sales and, subsequently, in March, 1972, submitted a report on this topic. Since then a major research study of all facets of the law relating to sale of goods has been undertaken by a research team of Canadian law teachers working under the direction of Professor Jacob S. Ziegel. This analytical work was supplemented by empirical studies conducted with the cooperation of the Canadian Manufacturers' Association. These were designed to obtain information on current selling and purchasing practices in Ontario, particularly at the manufacturing level, which might reveal the significance and adequacy of the existing rules of law. Special attention has been given to the American experience under Article 2 of the Uniform Commercial Code, since this presents an excellent alternative to Anglo-Canadian sales law, an alternative which is all the more relevant because it is the law of our closest trading partner.

During the last year the Commission has spent much of its time completing its consideration of the three volume research report prepared by

Professor Ziegel on the basis of detailed Research Papers. Work has now begun on the preparation of a final report on this topic, including draft legislation to implement our recommendations. Since uniformity of law is vitally important for those whose commercial activities extend across a number of provinces, it is our hope that the Draft Act may form a basis for discussion by the Uniform Law Conference of Canada with a view to ultimately producing a uniform law on this topic.

Since the law relating to sales is but one aspect of the wider law of contract, the Commission's work on this project has touched on a number of areas where the guiding legal principles are those of general contract law, and where some reform seems necessary. We hope, once our work on the sale of goods reference is completed, to turn our attention to those rules of general contract law that require reform.

We referred earlier to the demands that contemporary commercial life is imposing on sales law. Nowhere is the stress more evident than in the law's inadequate response to the problem of Products Liability. The revolution in manufacturing, distribution and retailing methods which has occurred since the formative period of sales law has brought with it pressing need for a re-examination of the scope and nature of a manufacturer's liability for defective goods to the ultimate user or purchaser of a product, whether such liability is based on warranty concepts or on the principles of tort law. The Commission has decided to undertake a project on the law of Products Liability. We envisage that this project will include an examination of policy issues and approaches to these issues adopted in other jurisdictions; an empirical study of the potential impact of reform, in practical terms, on manufacturers and distributors of goods; a study of the insurance aspects of products liability, including an assessment of the probable impact of stricter rules of liability; and lastly, a study of the economic basis of strict liability on which there has recently been much academic writing. Research work on the Products Liability Project will begin during the forthcoming year.

(b) *Reference on Professional Organizations*

On April 6, 1976, the Attorney General asked the Commission to undertake a study of the administration of certain statutes dealing with self-governing professions, under the jurisdiction of his Ministry. The particular statutes to be reviewed were *The Architects Act*, *The Law Society Act*, *The Notaries Act*, *The Professional Engineers Act* and *The Public Accountancy Act*. In November, 1976, the Attorney General, after conference with the Commission and with its concurrence, decided that the reference should be withdrawn and the subject matter referred to a special committee constituted by the Attorney General.

Since that date the matter has been dealt with by the Professional Organizations Committee, Ministry of the Attorney General.

(c) *Class Actions*

On November 25, 1976, the Commission received a letter of Reference from the Attorney General placing the subject of Class Actions on the Commission's programme. We were asked to study the nature and rationale of class actions and to investigate the problems, benefits and implications of their development in Ontario. We were asked to give particular attention to the potential impact of class actions upon the court system in terms of expense and administration.

Class Actions are court actions, launched by a representative party on behalf of a substantial group of individuals all having similar claims, in which they combine resources to have their claims settled in a single court proceeding, instead of through a multitude of separate actions; the judgment in a class action binds all the class members. Since both the burden and benefits of litigation are shared, this procedure is said to offer individuals with small claims access to the law, where individual suits would be uneconomic. The procedure has important implications for ratepayers, tenants' organizations, shareholders, unions, consumers and environmental or other citizen groups.

Our research into class actions will examine the utility and disadvantages of class actions; the protection of the various interests of the class representatives, the absentee class members, the opposing party and the public interest, by means of procedural safeguards; the assessment and distribution of damages; awarding costs in class actions; negotiated settlements of class actions; the role of the class lawyer and professional responsibility; and alternatives to the class action. We have initiated a process of public consultation on this topic by placing advertisements in major newspapers and professional journals inviting interested parties to submit briefs on the subject of class actions. We are considering further means of encouraging public involvement in this project, since it is one which potentially affects a great many individuals and groups.

OTHER PROJECTS IN PROCESS

(a) *The Law of Trusts*

The law of trusts has had to adapt to many challenges in its history. The trust is our law's most innovative and flexible mechanism for facilitating personal dispositions of property and managing wealth for the benefit of an individual or a group. The central element of the trust concept is a fiduciary relationship, based on a division of property control and property enjoyment between two persons, the trustee who controls and the beneficiary who enjoys. The trustee's key responsibility is to ensure that the property is administered in accordance with the lawful wishes of the person who created the trust, or, where these are unknown, to ensure that the property is administered for the benefit of the beneficiaries, in accordance with equitable principles. Although trust law originated in cases involving private family settlements, its contemporary significance is far broader than

family trusts, since trusts have become important in many varied areas of business and commercial life. The cumulative effect of the social, economic and taxation changes of this century has been, not merely to pose new and difficult challenges for the trust, but to underline inadequacies in the law of trusts.

It is against this background that we are re-examining the law of trusts. Working papers on a broad range of topics were commissioned from leading law teachers, and then individually considered by the Commission. During the last year we have concentrated attention on the fundamental duties of trustees, considering the subjects of the delegation of responsibilities by a trustee, conflicts of interest and duty on the part of a trustee, and the standard of care required of a trustee. We have also considered the problem of apportionment of capital and income, a proposal to repeal *The Settled Estates Act*, and a detailed paper on trusts and the conflict of laws. We expect to complete consideration of the working papers in the near future and will then turn to the preparation of a draft report. This report will contain a draft Bill to revise *The Trustee Act* in accordance with our recommendations.

Although originally the law of trusts derived exclusively from court decisions, today a number of statutes overlay and modify the common law. This mixture of case law and statute law provides a flexibility that is all the more necessary in view of the continuing evolution of the trust concept. Rather than develop an exhaustive and rigid codification of the law of trusts, we hope to produce revised legislation that will consolidate all provincial statutory provisions relating to the law of trusts, and will meet the needs, where statutory intervention is called for, of contemporary trust drafting and practice. Work on the law of trusts continues with the expert advice of the Project Director, Professor Donovan W. M. Waters of McGill University.

During the coming year, we expect to start work on a related project on the Administration of Estates, examining the law and procedure involved in the winding up of estates. Currently Ontario law on this topic is rather inconveniently to be found in a number of statutes: *The Surrogate Courts Act* and Rules, in sections 37 to 60 (excepting section 53) of *The Trustee Act*, and in those residual portions of *The Devolution of Estates Act* that were not carried into the Succession Law Reform Bill. We hope to revise, rationalize and consolidate these provisions, examining approaches to the subject taken in New Zealand, Australia and England, and sounding out the views of interested parties. Our ultimate objective is to produce a new comprehensive Administration of Estates Bill, containing present legislation, our proposed reforms, and a partial codification of the common law on this topic.

(b) *The Basic Principles of Land Law*

The conceptual basis of land law in Ontario is now over seven hundred and fifty years old and it is not surprising that in many respects it does

not accord with contemporary needs and conditions. We commissioned Professor D. Mendes da Costa to undertake a review of the conceptual basis of Ontario land law which derives from rules and principles dating from the feudal period of the English common law. Professor Mendes da Costa has submitted a number of research papers containing proposals for fundamental reform of the law concerning the ownership and transfer of interests in land, including a proposal for the total abolition of legal future interests.

During the last year, Professor Mendes da Costa submitted a two hundred page summary of the law of future interests. This project has profound implications for all aspects of property law. Although research has been completed in this area, the Commission has not been able to start detailed discussion of the proposals, deferring this topic to allow work on more immediately pressing projects.

(c) *The Law of Mortgages*

Although the law of mortgages generally appears to be functioning satisfactorily, certain facets of the law contain deficiencies and incongruities. We have embarked on a broad study of the law of mortgages. Research is being directed by Professor W. B. Rayner of the University of Western Ontario who is currently editing the new edition of Falconbridge on Mortgages. We have asked Professor Rayner to conduct a thorough analysis of the law to identify problem points and to suggest reforms. The research study will explore such matters as priorities, the redrafting of statutory mortgage forms, and the theoretical basis of the mortgage concept, viewed in the light of Professor Mendes da Costa's work on the Basic Principles of Land Law.

(d) *The Hague Convention Concerning the International Administration of the Estates of Deceased Persons*

Today, increased mobility and travel have had such impact on Canadian life that it is not unusual for Canadians to own assets abroad, and for investment to range far beyond national boundaries. The rise of such multi-national investment, and in particular the increasing amount of foreign investment in Canada, has posed difficult problems for Canadian lawmakers. Traditional concepts of law as limited in its operation to a single legal jurisdiction and to legal actors, entities and objects within that jurisdiction, have needed to be supplemented by increasingly sophisticated conflict of laws rules in order to determine which legal rules should govern a legal act involving more than one jurisdiction. Organizations such as the Hague Conference on Private International Law serve an increasingly important function in developing conventions to promote regularity and uniformity in areas of private law which have this international aspect.

We think it important that provincial law reform agencies encourage the consideration of international conventions concerning subjects falling within provincial legislative competence, where reform is necessary and international cooperation essential. Two years ago, we outlined our Report

on the International Convention Providing a Uniform Law on the Form of the International Will. Since then the Ontario Government has dealt with this Report by including the Convention in its Succession Law Reform Bill, and has indicated its willingness to ask the Government of Canada to accede to the Convention on behalf of the Province of Ontario.

During the last year we have continued work on the preparation of a report on the legislation that would be required to give effect in Ontario to a parallel Convention concerning the International Administration of the Estates of Deceased Persons. Under this Convention, signatory states would establish an international certificate which could be obtained by an administrator certifying that he or she is entitled to administer the movable estate of a deceased person, and indicating the administrator's powers. A single representative would be able to carry on the whole of the administration of a movable estate, to claim and seize the estate assets, and to proceed with necessary transactions such as the settlement of debts, the delivery of legacies and the sharing of assets, regardless of the location of the assets of the estate. The international certificate would resolve the question of the recognition of a foreign grant of representation. We expect to complete work on this difficult and important matter in the near future. Eventually we hope to culminate our related work on the administration of estates by preparing a new draft Administration of Estates Bill; the Convention would logically fit within that statute.

(e) *Enforcement of Judgment Debts*

For some time now, we have been studying the Enforcement of Judgment Debts, an area of Ontario law urgently needing overhaul and revision. Often uncertain, complex and archaic, the law relating to the enforcement of debts has developed in an *ad hoc* and unsystematic fashion since the early days of the province. The result today is that it is often difficult for creditors to exercise their remedies effectively, and debtors are in an uncertain and unsatisfactory situation, seldom knowing when and how they will be called upon to meet their obligations. Our objective in this project is to revise and to rationalize both law and procedure, to facilitate the collection of judgment debts while protecting the debtor from harassment, and to devise new procedures to deal with the difficult problems of the overcommitted small debtor. We have been examining critically the legal rules, the formal procedures and the actual practices involved in enforcing judgment debts to identify and analyze shortcomings, and to devise alternative approaches to the enforcement of debts.

Earlier in this report we discussed our Interim Report on the Orderly Payment of Debts, which sets out a scheme to provide effective services for overcommitted small debtors. In addition to this scheme, we have also devoted much attention to a new proposal for the enforcement of judgments, one that we hope will be more effective and yet more humane than present procedures. We are considering the possibility of establishing a service and enforcement office which would have overall responsibility for the enforcement of judgments which are recovered in the Supreme Court, in the

County and District Courts and in the Small Claims Court. This office could be responsible for the service of process, and for ascertaining the means of the debtor by conducting judgment debtor examinations; it could also be in charge of the actual enforcement measures such as garnishment and seizure and sale of property. It has been suggested that such an office might expedite and improve the effectiveness of present enforcement methods, avoid harassment, and reduce the overall expense of the enforcement process by removing parallel structures which involve much duplication of effort. This entire subject has formed the basis of discussions with sheriffs and court registrars.

Research is also continuing on the methods of enforcement including the seizure and sale of both real and personal property under a writ of execution, garnishment, and equitable execution, with a view to revising the substantive law governing these enforcement mechanisms, and improving the effectiveness of the procedures.

We hope to examine all major aspects of the law concerning enforcement of judgment debts, with the ultimate objective of achieving a more rational and expeditious procedure. Our research consultant has been David E. Baird, Esq., a legal practitioner with the firm of Harries Houser, Toronto, who has invaluable experience concerning the practical shortcomings in this area of the law.

(f) *Declarations of Marital Status*

Earlier in this report, we alluded to the special difficulties which increased international travel and mobility pose for the law, and to the growing importance of rules concerning the conflict of laws. In the area of family law, this can become very important when the court considers the rights or duties of persons who have been married or divorced in a foreign country. Unhappily, the growing incidence of marriage breakdown has made this much more frequent. Marital status often determines a broad range of legal rights, including the right to marry again, succession rights and maintenance rights. It has thus become important for someone whose marriage has been solemnized or dissolved abroad, to be able to obtain an authoritative declaration as to the validity of the foreign divorce or nullity decree. In addition, where the validity of a marriage has been impugned, a person may wish to obtain a declaration that a valid marriage exists.

Research on some aspects of this problem was carried out some years ago by the Research Team of the Commission's Family Law Project. The question of declarations of status is now the only residual matter from our reports on family law that requires consideration. During the last year, we have been working towards the preparation of a final report dealing with the question of a court's power to declare the validity, according to the law of Ontario, of an existing marriage or of a foreign divorce or annulment. In addition to the conflict of laws aspect of this topic, there are difficulties concerning the basis upon which the court should assume jurisdiction to entertain applications for declarations of marital status and the question of

the appropriate constitutional basis for the province to enact legislation on this matter. We hope to complete a final report on this topic in the near future.

(g) *The Law of Standing*

Traditionally, the courts have been concerned with the adjudication of disputes between private individuals, and this private law emphasis has largely shaped the courts' procedures and remedies. However, in recent years there has been a growing public interest movement, which seeks to bring legal actions in the courts to protect the environment and other broad public interests. The public interest movement has been less successful in gaining access to the law in Canada than in some other jurisdictions, because of restrictive rules governing awards of costs, controlling class actions, and imposing strict standing requirements. The law of standing, or status to sue, restricts public interest litigation by providing that no one can use the courts to challenge a statute or the action of a government or public agency, or seek damages or an injunction against public nuisance, unless they can show that they have some special private interest, usually a financial or property interest, or that they have suffered damage greater than that of other members of the general public. The standing barrier has prevented citizens from going to court to protect the environment and other public rights, and has blocked potentially beneficial and otherwise justiciable legal actions from ever being heard in court.

Many academic writers have argued that the doctrine is unduly restrictive, especially in the areas of administrative law, environmental law, consumer law and civil liberties. Generally, these authors have advocated legislative action to deal with the problem of standing, rather than leaving the problem to the courts to develop a new jurisprudence. Leaving development to the incremental growth of court decisions would lead to reform being long delayed, and to a long period of unpredictability. This would impose a heavy burden on the courts, which are entitled to expect clarity in the law they must apply. Potential litigants are entitled to know whether they have a right to sue, without expending funds and energy preparing for trial and subsequently being denied standing. Two recent cases in the Supreme Court of Canada have broadened the law of standing but their precise effect is problematic, as lower courts in different provinces have interpreted them both broadly and narrowly. If reform is considered desirable, legislation is probably the best way to achieve it. Grave doubts have, however, been expressed about the propriety of promoting public interest actions. It has been suggested that the state is the appropriate and sole protector of the public interest, except in those rare cases where the litigation concerns the validity of the government's own legislation, an important matter in a federal state. Fears have also been expressed that broadening the law of standing might cause a flood of court cases. Reform is necessary to achieve a fair balance between the desirability of encouraging citizens to participate actively in the protection of their rights and in the enforcement of the law, and the undesirability of allowing meddlers or professional

litigants to bring repeated, unfounded and vexatious law suits for the purpose of harassment. The Ontario Law Reform Commission has decided to embark on a study of the law of standing, with the ultimate aim of recommending a legislative response to these problems. The right of citizens to have access to the courts is an important safeguard against attempts to exercise administrative power unauthorized by statute; our study will have important implications for the rule of law, for the legitimacy of administrative decisions and for the caseload of the courts. Our research study will examine the policy questions and legal issues involved, and will canvass the experience of other jurisdictions, devoting special attention to empirical study of the validity of the argument that relaxing existing standing requirements would overburden the courts.

(h) *Future Programme*

The projects which we have discussed in this report present us with a challenging and extensive workload for the foreseeable future. As projects are completed, new studies are undertaken and other projects that for some reason have been deferred are taken under active review. We are always open to suggestions from lawyers, members of the judiciary, public officials, and the general public concerning defects and anachronisms in the law of Ontario that require reform. The central task of law reform is the systematic, long-range, continuous review of the law, a task that will last as long as the democratic process of making laws continues.

ACKNOWLEDGEMENTS

During the past year we have maintained and strengthened our contact with law reform organizations in many other parts of the world. We are always very pleased to welcome members of these organizations who come to visit us. Such visits are most valuable in keeping us in touch with law reform developments throughout the world; in the past our work has been enriched by the experience of other jurisdictions.

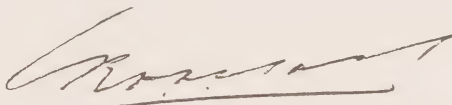
Attached to this report are three Appendices relating to the activities of the Commission. In Appendix A of this Report, we schedule three formal documents relating to the changes in the membership of the Commission, which have occurred during the past year. Appendix B consists of a list of the reports that have been prepared and submitted by the Commission since its inception in 1964, and a table showing the extent to which legislation has been enacted concerning our proposals.

Appendix C consists of a list of the officers and permanent staff of the Commission. We extend a warm welcome to those who have joined our ranks during the past year: Mrs. Martha Trofimenko who has joined our legal research staff, and Mrs. Elizabeth Page and Miss Julia O'Loughlin, new members of the administrative staff. To Lyle S. Fairbairn who resigned as Counsel to the Commission, to take up an appointment with the Department of Justice of the Government of Canada, we express our thanks for his scholarly and devoted contribution to our work, and wish him well in his

new work. Mr. Fairbairn has been succeeded as Counsel to the Commission by M. Patricia Richardson formerly a Legal Research Officer with the Commission. Our sincere thanks are also extended to the Secretary, Miss A.F.Chute, and to the administrative staff, who serve the Commission so tirelessly and devotedly.

May we also express our appreciation and thanks to you, Mr. Attorney, and to your Ministry, for the continuing interest, cooperation and assistance afforded to us.

All of which is respectfully submitted.



GEORGE A. GALE,
Vice Chairman.



RICHARD A. BELL,
Commissioner.



W. GIBSON GRAY,
Commissioner.



JAMES C. MCRUER,
Commissioner.



WILLIAM R. POOLE,
Commissioner.

March 31, 1977

APPENDIX A

1. Extract from the Minutes of the Ontario Law Reform Commission, February 8, 1977.

The following motion presented by the Honourable R.A. Bell, P.C., Q.C., and seconded by W. Gibson Gray, Q.C., was passed by unanimous vote:

On the occasion of the retirement of the Honourable James Chalmers McRuer, O.C., LL.D., as Vice Chairman, the members of the Ontario Law Reform Commission wish formally to record their deep sense of obligation to him for his unparalleled service to the cause of law reform.

His encyclopedic knowledge of law and social philosophy, his scholarly wisdom, his persistent and tenacious search for truth, his unswerving dedication to the betterment of life for his fellow citizens, his incredibly youthful outlook and vigour, are qualities which have earned him a unique place in the legal history of our Province and among reformers throughout the common law world.

Those who have been privileged to be his colleagues for more than 12 years on the Ontario Law Reform Commission pay him this humble and respectful tribute.

2. Statement issued by the Office of the Premier of Ontario, February 8, 1977.

The appointment of The Honourable George Alexander Gale, of Willowdale, as Vice Chairman of the Ontario Law Reform Commission was announced today by Premier William Davis.

The appointment, effective March 1, 1977, is for a three year term.

The Honourable G.A. Gale replaces the Honourable James C. McRuer, who will remain a member until his current projects are completed. Mr. McRuer served as Chairman of the Commission from 1964 to 1966 and as Vice Chairman since. He will be well remembered for his contributions to the work of the Commission.

Mr. Gale was born in Quebec and educated at the University of Toronto and Osgoode Hall Law School.

Called to the Bar in Ontario in 1932, he was appointed King's Counsel in 1945. First appointed to the Supreme Court of Ontario in 1946, he was Chief Justice of Ontario from 1967 until the end of 1976.

Mr. Gale has been Chairman of the Committee dealing with Rules of Practice for the Province of Ontario; Chairman of the Judicial Council for Provincial Judges of Ontario; and an executive committee member of the Canadian Judicial Council.

A member of the board of governors of Wycliffe College and Upper Canada College, Mr. Gale is also an honorary member of the Bar of Georgia, an honorary lecturer, Osgoode Hall Law School, and a member of the Canadian Bar Association.

3. Extract from the Minutes of the Ontario Law Reform Commission, March 7, 1977.

The following motion was presented by the Honourable R.A. Bell, P.C., Q.C., seconded by W.R. Poole, Q.C., and passed unanimously:

The Commission records with a combination of pleasure and sadness the appointment, effective March 18, 1977, of the Chairman, Herbert Allan Borden Leal, to the high office of Deputy Attorney General for Ontario.

Members of the Commission congratulate Dr. Leal upon this recognition of his exceptional talents and upon the opportunity this appointment gives for enhanced and significant service to the citizens of the Province. While commiserating among themselves at the loss of so distinguished a Chairman, the Commissioners recognize that in his new administrative role, he will be enabled to give continued leadership to the cause of law reform.

For eleven years, Allan Leal has given to the Commission, leadership and inspiration of the highest order. His profound legal scholarship, his dedication to the cause of law reform and of uniformity of law, his indefatigable industry, his patient and understanding perseverance in the search for effective solutions of legal and social problems, coupled with his warm and friendly personality have gained him recognition throughout Canada and abroad and have brought great credit to the Commission he led.

His colleagues pay humble tribute to his leadership and his qualities but equally express their sense of privilege in the long association with so fine a gentleman.

APPENDIX B

REPORTS MADE BY THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Legislation Concerning Commission Proposals
No. 1 The Rule Against Perpetuities	February 1, 1965	The Perpetuities Act, 1966, S.O. 1966, c. 113
No. 1A Supplementary Report on the Rule Against Perpetuities	March 1, 1966	<i>do.</i>
No. 2 The Wages Act; Assignment of Wages	March 3, 1965	The Wages Amendment Act, 1968, S.O. 1968, c. 142
No. 3 Personal Property Security Legislation	March 28, 1965	The Personal Property Security Act, 1967, S.O. 1967, c. 72
No. 3A Supplementary Report on Personal Property Security Legislation	May 18, 1966	<i>do.</i>
The Evidence Act; Admissibility of Business Records	February 16, 1966	The Evidence Amendment Act, 1966, S.O. 1966, c. 51, s. 1
The Mechanics' Lien Act	February 22, 1966	The Mechanics' Lien Act 1968-69, S.O. 1968-69, c. 65
Supplementary Report on The Mechanics' Lien Act	May 26, 1967	<i>do.</i>
Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	See The Mechanics' Lien Amendment Act, 1975, S.O. 1975, c. 43 The Ministry of Transportation and Communications Creditors Payment Act 1975, S.O. 1975, c. 44 The Public Works Creditors Payment Repeal Act, 1975, S.O. 1975, c. 45
The Execution Act: Exemption of Goods from Seizure	December 9, 1966	The Execution Amendment Act, 1967, S.O. 1967, c. 27
The Law of Condominium	March 6, 1967	The Condominium Act, 1967, S.O. 1967, c. 13
Basis for Compensation on Expropriation	September 21, 1967	The Expropriations Act, 1968-69, S.O. 1968-69, c. 36
The Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968, S.O. 1968, c. 120
Annual Report 1967	January 15, 1968	—
Certain Aspects of the Proposed Divorce Legislation contained in Bill C-187 (Can.)	January 19, 1968	The Divorce Act, S.C. 1967-68, c. 24, s. 26

Title	Date of Report	Legislation Concerning Commission Proposals
The Proposed Adoption in Ontario of the Uniform Wills Act	February 5, 1968	—
The Protection of Privacy in Ontario	September 10, 1968	See The Consumer Reporting Act, 1973, S.O. 1973, c. 97
The Insurance Act, R.S.O. 1960, c. 190, s. 183, as amended S.O. 1961-62, c. 63, s. 4 (commutation)	October 3, 1968	—
Trade Sale of New Houses and the Doctrine of Caveat Emptor	October 4, 1968	The Ontario New Home Warranties Plan Act, 1976, S.O. 1976, c. 52
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	The Landlord and Tenant Amendment Act, 1968-69, S.O. 1968-69, c. 58
Limitation of Actions	February 3, 1969	See The Highway Traffic Amendment Act, 1975, (No. 2), S.O. 1975, c.37 The Fatal Accidents Amendment Act, 1975, S.O. 1975, c. 38 The Trustee Amendment Act, 1975, S.O. 1975, c. 39
Annual Report 1968	April 7, 1969	—
The Age of Majority and Related Matters	May 12, 1969	The Age of Majority and Accountability Act, 1971, S.O. 1971, c. 98
Status of Adopted Children	June 3, 1969	The Child Welfare Amendment Act, 1970, S.O. 1970, c. 96, s.23; and see The Child Welfare Amendment Act, 1975, S.O. 1975, c. 1
Report on Family Law: Part I - Torts	November 4, 1969	The Family Law Reform Act, 1975, S.O. 1975, c. 41 (partial implementation)
Report on Section 20 of The Mortgages Act	March 12, 1970	The Mortgages Amendment Act, 1970, S.O. 1970, c. 54, s. 1
Report on Family Law: Part II - Marriage	April 6, 1970	The Civil Rights Statute Law Amendment Act, 1971, S.O. 1971, c. 50, s. 55 (partial implementation)
Annual Report 1969	April 20, 1970	—
Report on Actions Against Representatives of Deceased Persons	November 30, 1970	The Trustee Amendment Act, 1971, S.O. 1971, c. 32, s. 2
The Coroner System in Ontario	January 25, 1971	The Coroners Act, 1972, S.O. 1972, c. 98
Sunday Observance Legislation	February 26, 1971	The Retail Business Holidays Act, 1975, S.O. 1975 (2nd Session), c. 9

Title	Date of Report	Legislation Concerning Commission Proposals
Land Registration	March 23, 1971	—
Annual Report 1970	March 31, 1971	—
The Change of Name Act	May 31, 1971	The Change of Name Amendment Act, 1972, S.O. 1972, c. 44
Section 16, The Mortgages Act	June 18, 1971	—
Development Control	September 28, 1971	The Planning Amendment Act, 1973, S.O. 1973, c. 168, s. 10
Powers of Attorney	January 11, 1972	—
Occupiers' Liability	January 11, 1972	—
Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
Review of Part IV of The Landlord and Tenant Act	March 31, 1972	The Landlord and Tenant Amendment Act, 1972, S.O. 1972, c. 123
Annual Report 1971	March 31, 1972	—
The Non-Possessory Repairman's Lien	October 4, 1972	—
Administration of Ontario Courts, Part I	February 26, 1973	See The Administration of Courts Project Act, 1975, S.O. 1975, c. 31
Annual Report 1972	March 31, 1973	—
Administration of Ontario Courts, Part II	May 23, 1973	See The Administration of Courts Project Act, 1975, S.O. 1975, c. 31
Report on Family Law: Part III - Children	September 25, 1973	The Child Welfare Amendment Act, 1975, S.O. 1975, c. 1 (partial implementation)
Report on The Solicitors Act	September 28, 1973	—
Report on Motor Vehicle Accident Compensation	November 9, 1973	—
Administration of Ontario Courts, Part III	December 17, 1973	The Judicature Amendment Act, 1975, S.O. 1975, c. 30 (partial implementation); and see The Administration of Courts Project Act, 1975, S.O. 1975, c. 31
Report on Family Law: Part IV - Family Property Law	February 8, 1974	See The Family Law Reform Act, 1975, S.O. 1975, c. 41 (partial implementation)
Report on Family Law: Part V - Family Courts	February 8, 1974	See The Unified Family Courts Act, 1976, S.O. 1976, c. 85
Annual Report 1973	May 6, 1974	—

Title	Date of Report	Legislation Concerning Commission Proposals
International Convention Providing a Uniform Law on the Form of the International Will	July 3, 1974	—
Annual Report 1974	March 31, 1975	—
Report on Family Law: Part VI - Support Obligations	April 18, 1975	—
Mortmain, Charitable Uses and Religious Institutions	February 27, 1976	—
Landlord and Tenant Law	March 15, 1976	—
The Law of Evidence	March 29, 1976	—
Annual Report 1975	March 31, 1976	—
Report on Changes of Name	August 16, 1976	—
Report on The Impact of Divorce on Existing Wills	February 28, 1977	—

Many of the Commission's earlier reports are no longer in print. Those that are still in print may be ordered from Publications Service, Ministry of Government Services, 3B-7 Macdonald Block, Queen's Park, Toronto, Ontario, M7A 1N8, Canada.

APPENDIX C

OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

Chairman	Vacant
Vice Chairman	Honourable George A. Gale, Q.C., LL.D.
Commissioners	Honourable Richard A. Bell, P.C., Q.C. W. Gibson Gray, Q.C. Honourable James C. McRuer, O.C., LL.D., D.C.L. William R. Poole, Q.C.
Counsel	M. Patricia Richardson, B.A., M.A., LL.B.
Secretary	Miss A. F. Chute
Legal Research Officers	M. A. Springman, B.A., M.A., M.Sc., LL.B. R.S.G. Chester, B.A. (Hons. Juris.) C. G. Wolhowe, B.A., J.D. M. B. Trofimenko, LL.B., LL.M.
Administrative Assistant	Mrs. A. E. Harrower
Secretary to Vice Chairman	Mrs. E. N. Page
Secretary to the Honourable J. C. McRuer	Mrs. M. E. Williams
Secretary to Counsel	Mrs. D. M. Halyburton
Secretary to Administrative Officer	Mrs. B. G. Woodley
Secretaries to Legal Research Officers	Mrs. C. D. Smith Mrs. T. D. Loughlin
Receptionist	Miss J. A. M. O'Loughlin



ELEVENTH ANNUAL REPORT

1977

ONTARIO LAW REFORM COMMISSION

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Ontario

Ministry of the
Attorney
General

ELEVENTH ANNUAL REPORT

1977

ONTARIO LAW REFORM COMMISSION



Ministry of the
Attorney
General



The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act* to further the reform of the law, legal procedures and legal institutions. The Commissioners are:

DEREK MENDES DA COSTA, Q.C., LL.B., LL.M., S.J.D., *Chairman*

HONOURABLE GEORGE A. GALE, C.C., Q.C., LL.D.

HONOURABLE RICHARD A. BELL, P.C., Q.C.

W. GIBSON GRAY, Q.C.

HONOURABLE JAMES C. MCRUER, O.C., LL.D., D.C.L.

WILLIAM R. POOLE, Q.C.

M. Patricia Richardson, M.A., LL.B., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are located on the Sixteenth Floor at 18 King Street East, Toronto, Ontario, Canada.

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Ontario
Law Reform
Commission

To The Honourable R. Roy McMurtry, Q.C.
Attorney General for Ontario

Dear Mr. Attorney:

We have the honour to present the Eleventh Annual Report of the Ontario Law Reform Commission, for the period April 1, 1977 to March 31, 1978.

INTRODUCTION

This Report deals with the activities of the Commission during the period April 1st, 1977 to March 31st, 1978. This last year has been, in two respects, a year of deep satisfaction to the Commission.

First, we have made strong and steady progress towards the completion of major projects. In particular, we have devoted much time and energy to our Projects on the Sale of Goods and on the Law of Trusts. Indeed, our research on these two topics has been concluded and we are in the process of completing our Reports. So too, we are considerably advanced in the preparation of our Report on Declarations of Marital Status.

We have also experienced deep satisfaction in the enactment, during this last year, of legislation concerning matters upon which we have previously reported. *The Marriage Act, 1977*, *The Children's Law Reform Act, 1977* and *The Family Law Reform Act, 1978*, represent the statutory culmination of our Family Law Project. We note, with considerable pleasure, that so many of the recommendations contained in our Reports on Marriage, Children, Family Property Law, Support Obligations and Torts, found acceptance by the Legislature. Moreover, the enactment of legislation concerning our previous Reports has not been confined to Family Law. We would also mention *The Succession Law Reform Act, 1977*, and, in this context, our Reports on Family Property Law, The Proposed Adoption in Ontario of The Uniform Wills Act, The International Convention providing a Uniform Law on the Form of the International Will and The Impact of Divorce on Existing Wills.

In our last Report, our Tenth Annual Report, we noted that the Chairman of the Commission, H. Allan Leal, Q.C., LL.M., LL.D., had resigned to assume appointment as the Deputy Attorney General for Ontario. On April 15, 1977 the Premier of Ontario, the Honourable William G. Davis, Q.C., announced the appointment of Dr. Derek Mendes da Costa, Q.C., LL.B., LL.M., S.J.D., as Chairman of the Commission. The appointment of Dr. Mendes da Costa commenced on July 1st, 1977.

It is with great pleasure that the Commission records that, on July 11th, 1977, our Vice Chairman, the Honourable George Alexander Gale, Q.C., LL.D., was appointed a Companion of the Order of Canada.

THE PROGRAMME: REFERRED MATTERS

Section 2(1) (d) of *The Ontario Law Reform Commission Act* requires the Commission to inquire into and to consider any matter relating to any subject referred to it by the Attorney General. No new matters were referred to the Commission during the period covered in this Report. Substantial progress was made on two prior references, the Sale of Goods Project and the Class Actions Project.

PROJECTS IN PROCESS

(a) *Sale of Goods Project*

In its Report one year ago, the Tenth Annual Report, the Commission set out in detail the history of the Sale of Goods Project. The project has involved a study of major proportions. Twenty-six working papers have been prepared for the Commission. In addition, the Commission has considered a three volume research report prepared by the Project Director, Professor J. S. Ziegel of the University of Toronto. The major portion of the past year has been spent considering and settling draft legislation implementing the policy decisions taken on the basis of the research report. Our Report will include a Draft Sale of Goods Bill. In the formulation of this Draft Bill we have carefully considered legislation in other jurisdictions, particularly Article 2 of the Uniform Commercial Code. Our draft legislation is both detailed and complex and its consideration has necessitated the scheduling of many extra meetings. The final Report on the Sale of Goods is now being prepared for submission.

It is apparent that the law relating to sales is but one aspect of the wider law of contract. As the project has progressed, we have become increasingly convinced of the need for some reform of general contract law. We anticipate that once our Report on the Sale of Goods has been completed we will commence a review of those legal principles that comprise the general law of contract.

(b) *Class Actions Project*

The subject of class actions was referred to the Commission by the Attorney General in November, 1976. The Commission was requested to investigate the advisability of the development of class actions in Ontario, with particular reference to the potential impact of an expanded class actions mechanism on the court system.

Class actions are actions whereby numerous persons having the same interest may either sue or be sued. In Ontario, class actions are founded on the Rules of Court. It would appear that, under the present Rules, the circumstances in which such actions may be brought, particularly in the case of a plaintiff suing on behalf of a class, may be somewhat restrictive. Those arguing for the expansion of class actions cite the savings to both the parties and the courts when issues common to many persons are dealt with simultaneously. In addition, in the case of plaintiffs' class suits, the procedure is said to provide a means whereby persons with small individual claims may seek redress for their injuries

where separate lawsuits would be uneconomical. Those arguing against class actions tend to focus on the burden that such suits might impose upon court resources.

The Commission's investigation will include the following: the costs and benefits of class actions; the protection by means of procedural safeguards of the respective interests of class representatives, absentee class members, the opposing party and the public; the means of assessment and distribution of damages; the awarding of costs in class actions; negotiated settlements of class actions; the role of the lawyer representing the class; professional responsibility; and, alternatives to the class action. During the past year, the Commission's internal staff has prepared a detailed research design. Substantial progress has also been made in completing the first stage of the project relating to the costs and benefits of an expanded class actions mechanism. We began by examining the present law governing class actions in Ontario under Rule 75. We then turned our attention to the experience in the United States of America, particularly in the federal court system, where class actions are governed by a specific and less restrictive procedure. We have consulted with persons knowledgeable about the American experience with class actions, focusing on the areas of substantive law in which class actions have been employed. At the same time, we have investigated American statistical and empirical data. Our interest has been to ascertain the role and function of the class action, the extent to which it has been utilized, and the impact of the class action on the court system.

It was obvious to us that any examination of class actions demanded a deep knowledge of practice and procedure in the courts. For this reason, an Advisory Committee consisting of leading members of the litigation bar, judges and academic experts in civil procedure was constituted under the chairmanship of the Commission's Vice Chairman, the Honourable G. A. Gale.

During the coming year we will begin the process of formulating our recommendations with respect to the changes, if any, that should be made to the procedure governing class actions.

THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

Under its founding Act, the Commission has power to inquire into and consider any matter relating to reform of the law. Accordingly, the Commission may initiate research on its own motion. During the past year, two projects have been commenced by the Commission in this way: namely, Products Liability and the Administration of Estates of Deceased Persons.

PROJECTS IN PROCESS

(a) *The Law of Trusts*

Work on the law of trusts has continued during the past year under the able direction of the Project Director, Professor Donovan W. M. Waters of the University of Victoria. The Commission has completed consideration of the remaining research papers dealing with Conflict of Laws and Vesting Orders under *The Trustee Act*, and has settled all outstanding policy issues in respect of earlier research papers. The project is one of considerable magnitude and importance and has involved serious and lengthy deliberation by the Commission.

Preparation of the Commission's final Report on the Law of Trusts and of a new Draft Trustee Act is under way. It is anticipated that the final Report and draft legislation will be placed before the Commission for approval in the autumn of 1978.

(b) *Administration of Estates of Deceased Persons*

During the past year, work was commenced on a project dealing with the administration of estates of deceased persons. *The Succession Law Reform Act, 1977* is concerned, among other things, with the rules of intestate succession formerly contained in *The Devolution of Estates Act*. The objective of this project, which originally formed part of the Commission's project on the law of trusts, is a new Administration of Estates Act. The new Act would codify and revise some of the common law doctrines dealing with the administration of estates. It would bring together, in a revised and expanded form, relevant portions of *The Trustee Act* and *The Devolution of Estates Act*, and the provisions governing practice under *The Surrogate Courts Act* and Rules.

Professor George Alexandrowicz of Queen's University has been appointed Project Director. In order that the Commission may obtain the views of persons having practical experience in estate administration, an Advisory Committee of leading practitioners and other knowledgeable persons has been constituted under the chairmanship of Malcolm S. Archibald, Q.C. Preliminary meetings have been held with members of the Advisory Committee for the purpose of settling the research design.

Research papers are being commissioned and it is anticipated that work will commence during the coming year on the following topics: (1) the office of the personal representative; (2) the conveyance of the real property and the transfer of the personal property of deceased persons; (3) administration of estates of foreign decedents; (4) the position of the beneficiary; (5) rights of creditors; and (6) Surrogate Court procedure.

(c) *The Hague Convention Concerning the International Administration of the Estates of Deceased Persons*

Several years ago, the Commission undertook a study of the question whether the Hague Convention Concerning the International Administration of the Estates of Deceased Persons should be given effect in Ontario. The matter of the Convention is closely related to the Commission's Project on the Administration of Estates of Deceased Persons. For this reason, it has been decided that research on the Convention should form part of this project and should be considered in the context of the entire question of the administration of estates of foreign decedents. Research on this topic is being undertaken by Professor Marvin G. Baer of Queen's University.

(d) *Basic Principles of Land Law*

Because of other commitments, particularly with respect to the references from the Attorney General on the Sale of Goods and Class Actions, it has been necessary to defer work on this important area of the law for the present time. The Commission hopes to be in a position to resume study of the basic principles of land law in the near future.

(e) *The Law of Mortgages*

Work on the law of mortgages has been suspended pending resumption of research on the basic principles of land law. It is hoped, however, that research on the law of mortgages can proceed during the coming year.

(f) *Products Liability*

Deficiencies and anomalies in the law governing products liability became apparent to the Commission during the course of its project on the Sale of Goods. In March, 1977, it was decided to undertake an examination of the nature and scope of a supplier's liability for defective products to the ultimate user or purchaser of a product and to other persons injured by the product. During the last year, work commenced on the Products Liability Project. Professor Stephen M. Waddams of the University of Toronto was appointed Project Director.

From the outset, the Commission has sought to encourage public participation in order to obtain the views of all persons and groups having an interest in products liability. An advertisement was placed in major newspapers requesting briefs, and a background paper prepared and circulated to assist persons wishing to make submissions. Questionnaires were circulated to members of the Canadian Manufacturers' Association and to insurers and unions in an attempt to gauge the practical effects of

any change in the law. In addition, contact was established with the Consumers' Association of Canada, the Commercial, Consumer and Corporate Law Section of the Canadian Bar Association (Ontario Branch), and with the Ministry of Consumer and Commercial Relations and the federal Department of Consumer and Corporate Affairs.

Research papers have been completed on the following topics: a comparative study of the laws governing products liability in civil law jurisdictions; pure economic loss caused by defective products; the insurance implications of a change from a negligence regime to strict liability; and, the economic basis of strict liability for defective products. Additional research papers are being prepared dealing with the conflict of laws and constitutional aspects of products liability. It is envisaged that the Commission will commence its formal consideration of the research in the autumn of 1978.

(g) *Enforcement of Judgment Debts*

Not infrequently, frustration has been expressed with respect to the enforcement of judgment debts. The vagaries of post-judgment debt collection arise in large measure from the often ambiguous, complex and archaic state of existing law, the result of unsystematic historical development. This clearly unsatisfactory situation affects creditor and debtor alike, for neither party can accurately assess the existence or efficacy of all available remedies or protection under the law.

The Commission is continuing its study of the substantive and procedural rules, and the actual practice, relating to the enforcement of judgment debts. Our purpose is to propose a system that appropriately balances the rights of judgment creditors against those of judgment debtors. Accordingly, we have been examining all methods of enforcement, including execution, garnishment, and equitable execution. Our consideration of the seizure and sale of personalty has largely been completed; work has commenced on other topics, including fraudulent conveyances and pre-judgment seizure. In addition, a working paper has been commissioned on the law relating to the seizure and sale of real property.

In order to eliminate the inefficiency, expense and confusion attendant upon parallel enforcement structures, we are considering the establishment of an integrated service and enforcement office staffed by the sheriff and his officers. This office would be responsible for the enforcement of judgments of the Supreme Court, the county and district courts, the Provincial Court (Family Division), the Unified Family Court, and the small claims courts.

In our examination of the law respecting the enforcement of judgment debts, we have been ably assisted by Mr. David E. Baird, Q.C.

(h) *Declarations of Marital Status*

The Commission's Project on Declarations of Marital Status is the only topic of the Family Law Project that remains outstanding. The project deals with the jurisdiction of the court to declare the validity of an existing marriage, or of a foreign divorce or annulment, according to the law of Ontario. While the pressure of other work has delayed completion of the project, a final Report is being prepared for submission.

(i) *The Law of Standing*

The concept of *locus standi*, status to bring suit, has increasingly become a confused and problematic area of the law, particularly where the subject matter of the lawsuit affects public rights. As a general proposition, it has been held that an action to enforce public rights should be a matter for the Attorney General, either in his own name or by means of a relator action. This general proposition is subject to some statutory exceptions and to certain other exceptions, the broadest of which is that a private individual can sue if he or she can show a special private interest or demonstrate that he or she has suffered special damages.

The rules with respect to standing to litigate issues affecting public rights have been criticized by many as being unduly restrictive, and the need for legislative reform has been advocated repeatedly. Those advocating reform have argued that the present rules of standing prevent many important and otherwise justiciable issues from being litigated. It should, however, be noted that contrary views have been expressed. Those opposed to expansion of the rules of standing generally base their objections on two grounds: first, that as a matter of precedent and the structure of our system of government, the supremacy of the Attorney General in these matters ought to be preserved; secondly, that expansion of the rules of standing would lead to a flood of litigation.

The Commission intends to study carefully the arguments both for and against the expansion of the law of standing. Comparative analysis of legislation governing standing in other jurisdictions will be undertaken and statistical data, if available, will be investigated. The Commission will also consider whether a general recommendation can be made with respect to reform of the law of standing, or whether specific recommendations ought to be made with respect to various areas of the law.

During the past year, the internal staff has completed research on the present state of the law of standing. In the coming year, we will critically examine the problems under the existing law and possible solutions to these problems.

(j) *Future Programme*

It is anticipated that the task of completing the projects now in process will occupy the Commission for the foreseeable future. Once the Commission has reported on its major projects dealing with the Sale of Goods and the Law of Trusts, however, we will turn our attention to a consideration of projects that have been deferred and to new projects that might be included in our programme. The Commission is always pleased to receive suggestions for reform from members of the judiciary and of the bar, and from the general public.

LIAISON WITH OTHER LAW REFORM AGENCIES

Since the establishment of the Ontario Law Reform Commission in 1964, law reform agencies have been created in many other jurisdictions. These agencies share the common task of law reform and it not infrequently happens that research interests coincide. For this and other reasons, there is an obvious need to maintain and strengthen our contacts with law reform organizations throughout the world. We are pleased to report that the Commission was represented by the Honourable J.C. McRuer and the Honourable Richard A. Bell at the Meeting of Commonwealth Law Reform Agencies held in London, England in August, 1977. Further, as in previous years, we were privileged during the last twelve months to receive visitors from outside our own jurisdiction. We are grateful to them all for the opportunity to discuss problems of mutual interest.

Our guests, whom we were most pleased to receive, included: Mr. Deo Bhagowtee, Counsel to The Law Commission, Trinidad and Tobago; Mr. B.J. Cameron, Deputy Secretary for Justice, New Zealand; Miss Yolande Bannister, Senior Parliamentary Counsel to the Ministry of Justice, Barbados; Professor Shimon Shetreet, Faculty of Law, University of Manitoba, Visiting Professor from the Hebrew University of Jerusalem; and Miss Rike Luebbe, of the Max-Planck-Institut, Germany.

We also derived much pleasure from a visit by Members of the New Zealand Royal Commission on The Courts. The members we had the good fortune to meet were The Honourable David Stuart Beattie, Chairman; His Honour Judge John Donald Murray, Deputy Chairman; and Mr. Mark Vickerman, Research Officer.

Our visitors, during this last year, also included two members of other Canadian law reform agencies: namely, Professor Brian A. Grosman, Acting Chairman of the Law Reform Commission of Saskatchewan, and Mrs. Margaret A. Shone, Counsel to the Alberta Institute of Law Research and Reform. These visits further strengthened the firm and solid relationship we have long enjoyed with these agencies.

As a result of our discussions with Miss Yolande Bannister, arrangements have been made for two legal officers of the Ministry of the Attorney General of Barbados to visit the Commission during the summer months. We much look forward to receiving these legal officers. In this context, we were particularly pleased by a visit to our Commission of the Chief Justice of Barbados, Sir William Randolph Douglas.

During this last year the Commission has taken the opportunity to visit three Ontario Law Schools: namely, the Law Schools of the University of Western Ontario, Queen's University and the University of Ottawa. We were warmly received by the Deans of these Law Schools, by members of the Faculty and by the student body. We are much obliged to all those whose efforts combined to make our visits both successful and enjoyable.

ACKNOWLEDGMENTS

Attached to this Report as Appendix A is a list of the reports that have been prepared and submitted by the Commission since its inception in 1964, together with a table setting out the extent to which legislation has been enacted concerning our proposals.

Attached hereto as Appendix B is a list of the officers and permanent staff of the Commission. To those who have joined us during the past year we extend a sincere welcome: Ms. Jennifer K. Bankier, B.A., LL.B., Mr. William A. Bogart, B.A., LL.B., and Mrs. Mary Elizabeth Burt Salter, B.A., LL.B., as members of the legal research staff; and Mrs. Roslynne F. Mains, B.A., and Ms. Grace C. Novakowski, B.A., as members of the administrative staff. The Commission regrets the loss of several of its administrative and legal staff during the last year. To Mrs. Audrey Harrower, Mrs. Teresa Loughlin, Mrs. Margaret Williams and Mrs. Cynthia Smith, of the administrative staff, we express our grateful thanks for their faithful service. To Catherine Wolhowe and Mrs. Martha Trofimenko, legal research assistants on the Enforcement of Judgment Debts Project, we extend our best wishes for success in their new endeavours. To Mr. Simon Chester, a legal research officer who left to become Executive Counsel to the Deputy Attorney General, we acknowledge with gratitude our debt for his contribution to the work of the Commission, and wish him well in his new position.

Our sincere thanks are also extended to the Secretary, Miss A. F. Chute, and to the administrative staff for their devoted service.

Attached hereto as Appendix C is the text of a Statement issued by the Office of the Premier of Ontario upon the appointment of Dr. Derek Mendes da Costa as Chairman of the Ontario Law Reform Commission.

We wish also to record our thanks and appreciation to you, Mr. Attorney, and to the officers of the Ministry for your support and assistance during the past year.

All of which is respectfully submitted.

Derek Mendes da Costa

DEREK MENDES DA COSTA,
Chairman.

George A. Gale

GEORGE A. GALE,
Vice Chairman.

Richard A. Bell

RICHARD A. BELL,
Commissioner.

W. Gibson Gray

W. GIBSON GRAY,
Commissioner.

* JAMES C. MCRUER,
Commissioner.

William R. Poole

WILLIAM R. POOLE,
Commissioner.

March 31, 1978

* Due to illness, the Honourable J. C. McRuer was not available to sign the Report.

APPENDIX A
REPORTS MADE BY THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Legislation Concerning Commission Proposals
No. 1 The Rule Against Perpetuities	February 1, 1965	<i>The Perpetuities Act</i> , S.O. 1966, c. 113
No. 1A Supplementary Report on the Rule Against Perpetuities	March 1, 1966	<i>do.</i>
No. 2 The Wages Act; Assignment of Wages	March 3, 1965	<i>The Wages Amendment Act</i> , S.O. 1968, c. 142
No. 3 Personal Property Security Legislation	May 28, 1965	<i>The Personal Property Security Act</i> , S.O. 1967, c. 72
No. 3A Supplementary Report on Personal Property Security Legislation	May 18, 1966	<i>do.</i>
The Evidence Act; Admissibility of Business Records	February 16, 1966	<i>The Evidence Amendment Act</i> , S.O. 1966, c. 51, s.1
The Mechanics' Lien Act	February 22, 1966	<i>The Mechanics' Lien Act</i> , S.O. 1968-69, c. 65
Supplementary Report on The Mechanics' Lien Act	May 26, 1967	<i>do.</i>
Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	See <i>The Mechanics' Lien Amendment Act</i> , S.O. 1975, c. 43 <i>The Ministry of Transportation and Communications Creditors Payment Act</i> , S.O. 1975, c. 44 <i>The Public Works Creditors Payment Repeal Act</i> , S.O. 1975, c. 45
The Execution Act: Exemption of Goods from Seizure	December 9, 1966	<i>The Execution Amendment Act</i> , S.O. 1967, c. 27
The Law of Condominium	March 6, 1967	<i>The Condominium Act</i> , S.O. 1967, c. 13
Basis for Compensation on Expropriation	September 21, 1967	<i>The Expropriations Act</i> , S.O. 1968-69, c. 36

Title	Date of Report	Legislation Concerning Commission Proposals
The Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	<i>The Sandwich, Windsor and Amherstburg Railway Amendment Act</i> , S.O. 1968, c. 120
Annual Report 1967	January 15, 1968	—
Certain Aspects of the Proposed Divorce Legislation contained in Bill C-187 (Can.)	January 19, 1968	<i>Divorce Act</i> , S.C. 1967-68, c. 24, s. 26
The Proposed Adoption in Ontario of The Uniform Wills Act	February 5, 1968	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 See <i>The Registry Amendment Act</i> , S.O. 1978, c. 8, s. 1
The Protection of Privacy in Ontario	September 10, 1968	See <i>The Consumer Reporting Act</i> , S.O. 1973, c. 97
The Insurance Act, R.S.O. 1960, c. 190, s. 183, as amended by S.O. 1961-62, c. 63, s. 4 (commutation)	October 3, 1968	—
Trade Sale of New Houses and the Doctrine of Caveat Emptor	October 4, 1968	See <i>The Ontario New Home Warranties Plan Act</i> , S.O. 1976, c. 52
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	<i>The Landlord and Tenant Amendment Act</i> , S.O. 1968-69, c. 58
Limitation of Actions	February 3, 1969	See <i>The Highway Traffic Amendment Act</i> (No. 2), S.O. 1975, c. 37 <i>The Fatal Accidents Amendment Act</i> , S.O. 1975, c. 38. See now <i>The Family Law Reform Act</i> , S.O. 1978, c. 2, s. 60(4) <i>The Trustee Amendment Act</i> , S.O. 1975, c. 39
Annual Report 1968	April 7, 1969	—

Title	Date of Report	Legislation Concerning Commission Proposals
The Age of Majority and Related Matters	June 3, 1969	<i>The Age Of Majority and Accountability Act</i> , S.O. 1971, c. 98
Status of Adopted Children	June 3, 1969	<i>The Child Welfare Amendment Act</i> , S.O. 1970, c. 96, s. 23 See <i>The Child Welfare Amendment Act</i> , S.O. 1975, c. 1
Report on Family Law: Part I — Torts	November 4, 1969	<i>The Family Law Reform Act</i> , S.O. 1978, c. 2 (partial implementation)
Report on Section 20 of The Mortgages Act	March 12, 1970	<i>The Mortgages Amendment Act</i> , S.O. 1970, c. 54, s. 1
Report on Family Law: Part II — Marriage	April 6, 1970	<i>The Civil Rights Statute Law Amendment Act</i> , S.O. 1971, c. 50, s. 55 (partial implementation) See now <i>The Marriage Act</i> , S.O. 1977, c. 42 (partial implementation)
Annual Report 1969	April 20, 1970	—
Report on Actions Against Representatives of Deceased Persons	November 30, 1970	<i>The Trustee Amendment Act</i> , S.O. 1971, c. 32, s. 2
The Coroner System in Ontario	January 25, 1971	<i>The Coroners Act</i> , S.O. 1972, c. 98
Sunday Observance Legislation	February 26, 1971	<i>The Retail Business Holidays Act</i> , S.O. 1975 (2nd Session), c. 9
Land Registration	March 23, 1971	—
Annual Report 1970	March 31, 1971	—
The Change of Name Act	May 31, 1971	<i>The Change of Name Amendment Act</i> , S.O. 1972, c. 44
Section 16, The Mortgages Act	June 18, 1971	—
Development Control	September 28, 1971	<i>The Planning Amendment Act</i> , S.O. 1973, c. 168, s. 10
Powers of Attorney	January 11, 1972	—
Occupiers' Liability	January 11, 1972	—

Title	Date of Report	Legislation Concerning Commission Proposals
Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
Review of Part IV of The Landlord and Tenant Act	March 31, 1972	<i>The Landlord and Tenant Amendment Act</i> , S.O. 1972, c. 123
Annual Report 1971	March 31, 1972	—
The Non-Possessory Repairman's Lien	October 4, 1972	—
Administration of Ontario Courts, Part I	February 26, 1973	See <i>The Administration of Courts Project Act</i> , S.O. 1975, c. 31 <i>The Judicature Amendment Act (No. 2)</i> , S.O. 1977, c. 51, s. 9
Annual Report 1972	March 31, 1973	—
Administration of Ontario Courts, Part II	May 23, 1973	See <i>The Administration of Courts Project Act</i> , S.O. 1975, c. 31
Report on Family Law: Part III — Children	September 25, 1973	<i>The Child Welfare Amendment Act</i> , S.O. 1975, c. 1 (partial implementation) <i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 (partial implementation) <i>The Children's Law Reform Act</i> , S.O. 1977, c. 41 (partial implementation)
Report on The Solicitors Act	September 28, 1973	—
Report on Motor Vehicle Accident Compensation	November 6, 1973	—
Administration of Ontario Courts, Part III	December 17, 1973	<i>The Judicature Amendment Act</i> , S.O. 1975, c. 30 (partial implementation) See <i>The Administration of Courts Project Act</i> , S.O. 1975, c. 31 <i>The Small Claims Courts Amendment Act</i> , S.O. 1977, c. 52 (partial implementation)

Title	Date of Report	Legislation Concerning Commission Proposals
Report on Family Law: Part IV — Family Property Law	February 8, 1974	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 (partial implementation) <i>The Family Law Reform Act</i> , S.O. 1978, c. 2 (partial implementation) See <i>The Land Titles Amendment Act</i> , S.O. 1978, c. 7
Report on Family Law: Part V — Family Courts	February 8, 1974	See <i>The Unified Family Court Act</i> , S.O. 1976, c. 85
Annual Report 1973	May 6, 1974	—
International Convention Providing a Uniform Law on the Form of the International Will	July 3, 1974	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40, s. 42
Annual Report 1974	March 31, 1975	—
Report on Family Law: Part VI — Support Obligations	April 18, 1975	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 (partial implementation) <i>The Family Law Reform Act</i> , S.O. 1978, c. 2
Mortmain, Charitable Uses and Religious Institutions	February 27, 1976	—
Landlord and Tenant Law	March 15, 1976	—
The Law of Evidence	March 29, 1976	—
Annual Report 1975	March 31, 1976	—
Report on Changes of Name	August 16, 1976	—
Report on The Impact of Divorce on Existing Wills	February 28, 1977	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40, s. 17 (2)
Annual Report 1976	March 31, 1977	—

Many of the Commission's earlier reports are no longer in print. Those that are still in print may be ordered from Publications Service, Ministry of Government Services, 5th Floor, 880 Bay Street, Toronto, Ontario, Canada, M7A 1N8.

APPENDIX B

OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

Chairman	Derek Mendes da Costa, Q.C., LL.B., LL.M., S.J.D.
Vice Chairman	Honourable George A. Gale, C.C., Q.C., LL.D.
Commissioners	Honourable Richard A. Bell, P.C., Q.C. W. Gibson Gray, Q.C. Honourable James C. McRuer, O.C., LL.D., D.C.L. William R. Poole, Q.C.
Counsel	M. Patricia Richardson, B.A., M.A., LL.B.
Secretary	Miss A. F. Chute
Legal Research Officers	M. A. Springman, B.A., M.A., M.Sc., LL.B. Jennifer K. Bankier, B.A., LL.B. William A. Bogart, B.A., LL.B. Mary Elizabeth Burt Salter, B.A., LL.B.
Administrative Assistant	Mrs. Roslynne F. Mains, B.A.
Secretary to Chairman	Mrs. Stephanie Hlynka
Secretary to Vice Chairman	Mrs. E. N. Page
Secretary to Counsel	Mrs. D. M. Halyburton
Secretary to Administrative Officer	Mrs. B. G. Woodley
Secretary to Legal Research Officers	Ms. Grace C. Novakowski, B.A.
Receptionist	Miss J. A. M. O'Loughlin

APPENDIX C

Statement issued by the Office of the Premier of Ontario, April 15, 1977.

The appointment of Dr. Derek Mendes da Costa, Q.C., of Toronto, as Chairman of the Ontario Law Reform Commission was announced today by Premier William Davis. The appointment is effective July 1.

Dr. Mendes da Costa replaces H. Allan Leal, Q.C., who was recently appointed Deputy Attorney General.

Derek Mendes da Costa, 'Q.C., LL.B., LL.M., S.J.D., is a solicitor of the Supreme Court, England; a barrister and solicitor of the Supreme Court, Victoria, Australia; and a member of the Ontario Bar.

A former Assistant Lecturer in Law, King's College, University of London, Senior Lecturer, University of Melbourne and Professor at Osgoode Hall Law School, he has been a Professor at the University of Toronto since 1968.

He is a Fellow of Victoria College, University of Toronto, and holds membership in the International Faculty of Comparative Law (Strasbourg) and was a member of the Special Committee on Legal Education of the Law Society of Upper Canada. He has been Chairman of the Board of Advisors of the Pilot Conciliation Project, Ontario Provincial Court (Family Division), since 1976.

A former member of the Senate of York University, Dr. Mendes da Costa was its Vice Chairman in 1967-68. Former Chairman of the University of Toronto Faculty Association grievance committee, 1971, he is Chairman of the Graduate Studies Committee of the Faculty of Law.

Dr. Mendes da Costa was a member from 1975 to 1977 of the Human Review Committee of the Department of Psychiatry, as a representative from the Faculty of Law for the office of research administration and was a member of the President's Task Force on Gerontology.

A Research Associate with the Ontario Law Reform Commission on the Family Law Project for three years and the Law of Property Project for six, he prepared working papers on these topics.

Dr. Mendes da Costa is the author of more than twenty publications and articles on Law.



TWELFTH ANNUAL REPORT 1978

ONTARIO LAW REFORM COMMISSION

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Ministry of the
Attorney
General

TWELFTH ANNUAL REPORT

1978

ONTARIO LAW REFORM COMMISSION



Ministry of the
Attorney
General

The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act* to further the reform of the law, legal procedures and legal institutions. The Commissioners are:

DEREK MENDES DA COSTA, Q.C., LL.B., LL.M., S.J.D., *Chairman*

Honourable GEORGE A. GALE, C.C., Q.C., LL.D.

Honourable RICHARD A. BELL, P.C., Q.C.

W. GIBSON GRAY, Q.C.

Honourable JAMES C. MCRUER, O.C., LL.D., D.C.L.

WILLIAM R. POOLE, Q.C.

M. Patricia Richardson, M.A., LL.B., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are located on the Sixteenth Floor at 18 King Street East, Toronto, Ontario, Canada.

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Ontario
Law Reform
Commission

To The Honourable R. Roy McMurtry, Q.C.
Attorney General for Ontario

Dear Mr. Attorney:

We have the honour to present the Twelfth Annual Report of the Ontario Law Reform Commission, for the period April 1, 1978 to March 31, 1979.

INTRODUCTION

This Report deals with the activities of the Commission during the period April 1st, 1978 to March 31st, 1979. During this year, the Commission has been very heavily engaged in the area of Commercial Law.

We are pleased to record that we completed our Report on Sale of Goods. This Project has been a most complex and taxing one for the Commission; indeed, it has proved to be the most difficult experience that the Commission has yet encountered. It has been a Project that has made great demands upon the Commission, and it has consumed much of the Commission's time and energy. We have, nevertheless, been able to conclude research on our Project on Products Liability, and we anticipate that our Report will be completed in the Fall of 1979.

The emphasis that the Commission has placed upon completing the Projects on the Sale of Goods and Products Liability has necessarily meant that some other projects have had to be deferred. We have, however, continued to make considerable progress in our Projects on the Law of Trusts, the Enforcement of Judgment Debts, and the Administration of Estates of Deceased Persons. So too, we have continued work on our Projects on Class Actions and the Law of Standing.

THE PROGRAMME: REFERRED MATTERS

Section 2(1) (d) of *The Ontario Law Reform Commission Act* requires the Commission to inquire into and to consider any matter relating to any subject referred to it by the Attorney General. No new matters were referred to the Commission during the period covered in this Report. Work on one prior Reference, the Sale of Goods Project, was completed during the year and research on the remaining Reference, the Project on Class Actions, was continued.

(a) COMPLETED PROJECTS

Sale of Goods

During the course of the year, the Commission completed its review of the law relating to the sale of goods in Ontario. The Sale of Goods Project was referred to the Commission in February, 1970. At the request of the Government, we gave priority to an examination of warranties and guarantees in the context of consumer sales and, in 1972, published our Report on Consumer Warranties and Guarantees in the Sale of Goods. The Commission's final Report on Sale of Goods, submitted to the Attorney General in March, 1979, is a three volume Report, consisting of two volumes of legal analysis and recommendations for change, and one volume of appendices. The appendices

include the text of a Draft Bill to revise *The Sale of Goods Act*, which the Commission recommends for adoption in Ontario.

The two volumes of legal analysis and recommendations are divided into 19 chapters. The chapter headings are as follows:

- Chapter 1 Origin of Project, Organization and Methodology.
- Chapter 2 Evolution of Modern Sales Law.
- Chapter 3 The Need for a Revised Sale of Goods Act: Its Form and Related Questions.
- Chapter 4 Scope of The Sale of Goods Act and Definition of Sale.
- Chapter 5 Formation, Form and Assignment of Contract.
- Chapter 6 Definition of Express Warranty and Classification of Contractual Obligations.
- Chapter 7 Freedom of Contract and Minimum Behavioural Standards: The Doctrines of Unconscionability and Good Faith in Performance and Enforcement.
- Chapter 8 Course of Dealing and Usage of Trade, and Some Specific Constructional Issues.
- Chapter 9 The Seller's Implied Warranties (Conditions) of Title, Description and Quality and the Effectiveness of Disclaimer Clauses.
- Chapter 10 Express and Implied Warranties and the Doctrine of Privity.
- Chapter 11 Transfer of Title and Its Incidents Between Seller and Buyer.
- Chapter 12 The 'Nemo Dat' Doctrine and Sale Transactions.
- Chapter 13 Documents of Title.
- Chapter 14 Delivery and Payment.
- Chapter 15 Frustration in Contracts of Sale.
- Chapter 16 Seller's Remedies.
- Chapter 17 Buyer's Remedies.
- Chapter 18 Issues Common to Seller's and Buyer's Remedies.
- Chapter 19 Miscellaneous Issues.

The Report contains approximately 251 recommendations, directed towards a root and branch reform of the substantive law of the sale of goods

in Ontario. In formulating our recommendations for change, we have been strongly influenced by Article 2 of the American *Uniform Commercial Code*, and have recommended that Ontario should adopt a revised Sale of Goods Act that borrows heavily from, but is not simply a copy of, Article 2. A number of the more significant recommendations contained in the Report are the following. We recommend the introduction of a statutory duty of good faith in the performance of contracts, and the creation of a broad judicial power to avoid or modify contracts that at the time of their formation were unconscionable. We recommend the abolition of the parol evidence rule with respect to contracts for the sale of goods. The Report also recommends that the revised Sale of Goods Act should contain a general provision empowering the court to apply by analogy any of the provisions of the Act to transactions other than sales transactions, such as a lease of goods or contract for the supply of labour and materials. Detailed rules governing the risk of loss are laid down, which apply independently of the rules governing transfer of title.

We recommend that liability to an ultimate buyer be imposed upon manufacturers or distributors of goods who make representations or promises in any form relating to goods that are the subject of a contract of sale, if the natural tendency of such representations or promises is to induce the buyer to rely thereon and if the buyer acts in reliance upon the representation or promise. The requirement that an injured party must have relied upon a representation or promise relating to the goods is abolished, however, if the representation or promise was made to the public and the natural tendency of such representation or promise was to induce buyers generally to rely thereon.

Substantial modifications in the law governing implied warranties are also recommended. The distinction between warranties and conditions is abolished. The implied warranty of merchantability is expanded to require, *inter alia*, that goods shall remain fit or perform satisfactorily for a reasonable period of time, and that, in the case of new goods, spare parts and repair facilities, if relevant, shall be available for a reasonable period of time, unless the circumstances indicate otherwise. We also recommend that express and implied warranties be extended to goods supplied under a contract of work and materials, and that certain of the implied warranties should apply to a contract for the lease of goods.

The Report sets out in detail the remedies available to both buyers and sellers. We recommend abolition of the *a priori* classification of contractual terms as warranties and conditions, and recommend that the availability of remedies for breach of contract should turn, not on whether the term breached is a warranty or condition, but on the gravity of the breach. Broader remedies are made available if a breach is a "substantial" breach; that is, if it is one that the party in breach foresaw or ought reasonably to have foreseen as likely to impair substantially the value of the contract to the other party. The Report

further recommends that a seller be given the right to “cure” a non-conforming tender or delivery amounting to a substantial breach. The buyer is permitted to demand cure of any breach, whether or not it is substantial, and, upon the seller’s failure to cure, to treat the breach as a substantial breach. We recommend that a buyer be given the right to revoke acceptance of goods where there is a non-conformity amounting to a substantial breach, provided certain requirements are met. We recommend that a right be given to either party to demand adequate assurances of performance by the other where reasonable grounds for insecurity arise.

Substantial changes are recommended to the law governing anticipatory repudiation, with a view to relieving the aggrieved party from the requirement that he immediately elect between cancellation of the contract and continued performance. The changes include conferring upon the repudiating party a right to retract the repudiation under certain conditions, and imposing a duty of mitigation upon the aggrieved party.

A right of resale in the seller, and a right to “cover” in the buyer are recommended in cases of substantial breach. We recommend that the “available market” standard for the assessment of damages in the existing Sale of Goods Act be eliminated. In the case of a substantial breach at the agreed time of performance, it is recommended that damages be ascertained *prima facie* by the difference between the contract price and the price that could have been obtained by a commercially reasonable disposition or purchase of the goods. We also recommend that the buyer’s right to obtain specific performance against the seller be expanded.

The Report contains many other provisions designed to eliminate present or prospective problems relating to the sale of goods. It is our hope that these provisions generally will revise, reform and modernize the law governing the sale of goods, promote fair dealing, and assist the continued expansion of commercial practices through custom, usage and agreement of the parties.

The Commission wishes to express its appreciation to the Project Director, Professor Jacob S. Ziegel of the University of Toronto, for his immeasurable assistance and dedication during the course of the Project. We also wish to thank members of the Research Team. We acknowledge with gratitude the assistance of Mr. L. R. MacTavish, Q.C., former Senior Legislative Counsel, in the preparation of the Draft Bill.

(b) PROJECTS IN PROCESS

Class Actions

In November, 1976, the Attorney General referred the subject of class actions to the Commission, and requested that we investigate the advisability

of the development of class actions in Ontario, with particular reference to the potential impact of an expanded class actions mechanism on the court system.

Class actions are actions whereby numerous persons having the same interest may either sue or be sued. In Ontario, class actions are founded on the Rules of Court. It would appear that, under the present Rules, the circumstances in which such actions may be brought, particularly in the case of a plaintiff suing on behalf of a class, may be somewhat restrictive. The range of class actions permitted in Ontario under the existing Rules was expanded somewhat during the past year by the decisions of the Ontario Court of Appeal in *Naken et al. v. General Motors of Canada Ltd. et al.* (1979), 21 O.R. (2d) 780, (1978), 7 C.P.C. 209 (C.A.). In the earlier decision, Arnup, J.A., with whom Dubin and Blair, J.J.A., agreed, noted that the subject of class actions "raises complicated questions of great difficulty in the areas of the delineation of the class, identity of the causes of action of the class members, discovery and production from plaintiffs, proof of the breach of contract or tort that caused loss to the class, assessment of damages and allocation of proceeds". Arnup, J.A., also drew attention to the existence of the present Reference, and the Commission's intention to review fully these and other matters.

The Commission's investigation will include the following: the costs and benefits of class actions; the protection by means of procedural safeguards of the respective interests of class representatives, absentee class members, the opposing party and the public; the means of assessment and distribution of damages; the awarding of costs in class actions; negotiated settlements of class actions; the role of the lawyer representing the class; professional responsibility; and, alternatives to the class action.

During the past year working papers have been completed and submitted to the Commission that deal with the following topics: namely, the historical origins of class actions; the status of class actions in Ontario under present Rule 75; present alternatives to class actions such as consolidation, joinder and test cases; issues of procedural and substantive law relating to class actions; and, the costs and benefits of class actions, when evaluated in the light of existing empirical evidence. A computer tape containing data relating to all class actions in the U.S. federal courts for the fiscal years 1976, 1977, and 1978 was obtained and analyzed, with a view to obtaining objective information as to the effects of the expanded class action mechanism in force in that jurisdiction. In connection with plaintiff class actions, first drafts were completed by the Commission's research staff of working papers relating to issues of numerosity, typicality, predominance and common issues, superiority, preliminary tests on the merits, adequacy of representation and notice, opting out and opting in, discovery, damages, and *res judicata*. An economic analysis of class actions was commissioned from outside experts, and this paper has now been completed. Work is in progress on papers examining alternative class

action models, defendant class actions, and lawyers' fees and other costs in class actions.

Our work in this area has been impeded by the need to redirect the efforts of those members of our legal research staff who are involved in this Project towards the completion and publication of our Report on Sale of Goods. As a result of this delay, it has not, as yet, been possible for us to reach conclusions as to the merits of an expanded class action mechanism, or to develop detailed suggestions as to possible class action mechanisms that could be usefully referred to our Advisory Committee for this Project. This Committee consists of judges, leading members of the litigation bar, and academic experts in civil procedure, and is constituted under the chairmanship of the Commission's Vice Chairman, the Honourable G. A. Gale.

We intend, however, to give the Class Actions Project a high priority during the coming year. In the light of the substantial body of research that has already been completed, we expect that substantial progress will be made towards the formulation of recommendations with respect to the changes, if any, that should be made to the procedure governing class actions.

THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

Under its founding Act, the Commission has power to inquire into and consider any matter relating to reform of the law. Accordingly, the Commission may initiate research on its own motion. During the past year, no new projects have been commenced by the Commission.

PROJECTS IN PROCESS

(a) *Law of Trusts*

The Law of Trusts Project has involved a study of major proportions. During the course of the Project, the law of trusts has been examined in detail. Thirteen research papers have been prepared for, and considered by, the Commission.

During the past year work on the Law of Trusts Project has been largely completed. With the expert assistance of the Project Director, Professor Donovan W. M. Waters of the University of Victoria, the Commission's Report on the Law of Trusts and a revised Trustee Act implementing the Commission's recommendations are now in draft form. The draft Report and legislation will be placed before the Commission for consideration and approval commencing in June, 1979.

(b) *Administration of Estates of Deceased Persons*

Work on our Project on the Administration of Estates of Deceased Persons continues under the direction of Professor George Alexandrowicz

of Queen's University. During the past year six research papers on the following topics have been completed: (1) the office of the personal representative; (2) the conveyance of the real property and the transfer of the personal property of deceased persons; (3) administration of estates of foreign decedents; and, (4) the position of the beneficiary. It is intended to commission research papers on additional topics, including the rights of creditors and Surrogate Court procedure, during the coming year.

The Commission hopes to turn its attention to a consideration of the completed research papers in the autumn of 1979. In order that the Commission may obtain the views of persons having practical experience in estate administration, an Advisory Committee of leading practitioners and other knowledgeable persons has been constituted under the chairmanship of Malcolm S. Archibald, Q.C. Preliminary meetings have been held with members of the Advisory Committee for the purpose of settling the research design. The Commission will continue to seek the views of the Advisory Committee as research proceeds.

(c) *The Hague Convention Concerning the International Administration of the Estates of Deceased Persons*

The Hague Convention Concerning the International Administration of the Estates of Deceased Persons forms part of the Commission's larger Project on the Administration of Estates of Deceased Persons. The Hague Convention, and the question whether this Convention should be given effect in Ontario, are examined in a research paper that deals with the administration of estates of foreign decedents, prepared for the Commission by Professor Marvin Baer of Queen's University. The Commission hopes to be able to commence consideration of this research paper in the autumn of 1979.

(d) *Basic Principles of Land Law*

Because of other commitments, particularly with respect to the Reference from the Attorney General on the Sale of Goods and our Project on Products Liability, it has been necessary to defer work on this important area of the law for the present time. The Commission hopes to be in a position to resume study of the basic principles of land law in the near future.

(e) *The Law of Mortgages*

Work on the law of mortgages has been suspended pending resumption of research on the basic principles of land law. It is hoped, however, that research on the law of mortgages can proceed during the coming year.

(f) *Products Liability*

In March, 1977, the Commission decided to undertake an examination of the nature and scope of a supplier's liability for defective products to the ultimate user or purchaser of a product and to other persons injured by the product. The Products Liability Project was the result of the Commission's

appreciation of deficiencies and anomalies in the law governing products liability, which became apparent during the course of the Commission's Project on the Sale of Goods. During 1977, work commenced on the Products Liability Project. Professor Stephen M. Waddams of the University of Toronto was appointed Project Director.

This Project has involved a detailed and thorough analysis of the law relating to products liability, including a comparative study of developments in other Canadian jurisdictions and in jurisdictions outside Canada.

During the past year, work on this Project has been very nearly completed. The Commission's Report on the Law of Products Liability is now in the process of being settled in draft form. The draft Report, together with a Draft Bill to implement the Commission's recommendations, will be placed before the Commission for consideration and approval in the near future.

(g) Enforcement of Judgment Debts

For some time now the Commission has been engaged in a detailed study of the substantive law and procedural rules, as well as the actual practice, relating to the enforcement of judgment debts. Our study is a direct response to the vagaries and frustrations which not uncommonly plague post-judgment debt collection and which arise in large measure from the ambiguity, complexity and often antiquated nature of debtor-creditor law. The deficiencies and confusion endemic in this branch of the law frequently serve as a disincentive to invoke available legal rights and, in many instances, even serve to mask the very existence of such rights. Moreover, the unsatisfactory state of debtor-creditor law detrimentally affects the administration of justice by sheriffs, bailiffs and other officials having carriage of enforcement matters.

The present enforcement regime consists in the main of parallel and generally uncoordinated offices responsible, respectively, for the enforcement of judgments of the Supreme Court, the County and District Courts, the Provincial Court (Family Division), the Unified Family Court, and the Small Claims Courts. The existence of these essentially separate structures contrives at the outset to promote a not insignificant degree of inefficiency, waste and, ultimately, cynicism respecting the efficacy of the law. Accordingly, among other possibilities, we have considered the replacement of the present organizational structure with a fully integrated enforcement system, at the centre of which would be a new supervisory office responsible for the enforcement of judgments of all courts in Ontario.

In our attempt to establish a system that balances equitably the rights of creditors and debtors, we have also been examining all methods by which judgments may be enforced. Our consideration of execution against personal

property, garnishment, and discovery respecting the debtor's property (judgment debtor and third party examinations) has now been completed, and research papers on priority among creditors and equitable execution have been written. Work has also commenced on other topics, including fraudulent conveyances and preferences, and pre-judgment seizure. In addition, a commissioned working paper relating to the seizure and sale of real property has been completed and is in the process of being considered by the Commission.

Finally, the Commission has revised its unpublished Interim Report on the Orderly Payment of Debts (July 21, 1976), dealing with the proposed federal extension and composition of debts scheme, in light of the proposed new bankruptcy legislation (Part III of Bill S-14, 4th Session, 30th Parliament). The revision will be included as a separate chapter in our final Report.

In our examination of the law respecting the enforcement of judgment debts, we have been ably assisted by David E. Baird, Q.C.

(h) *Declarations of Marital Status*

The Commission's Project on Declarations of Marital Status is the only topic of the Family Law Project that remains outstanding. The Project deals with the jurisdiction of the court to declare the validity of an existing marriage, or of a foreign divorce or annulment, according to the law of Ontario. Pressure of other work has delayed the completion of this Project.

(i) *The Law of Standing*

An attempt by a private citizen to litigate issues affecting public rights often raises the issue of *locus standi*; that is, status to bring a lawsuit. Generally speaking, the courts have held that the Attorney General, either in his own name or by means of a relator action, is the proper person to institute such lawsuits. Nevertheless, there are exceptions to this proposition. For example, if a private individual can show that he or she has a special interest or can demonstrate that he or she has suffered special damages, that individual will usually be accorded standing to sue.

Recent cases have demonstrated that this area of the law is both complex and problematic, and arguments can be made both in favour of and against the liberalization of the law of standing. Obviously these arguments must be scrutinized very carefully. In addition, the Commission intends to study relevant legislation in other jurisdictions and proposals advanced by other law reform agencies dealing with this topic. The Commission will also attempt to examine, in jurisdictions that have expanded the law with respect to *locus standi*, any relevant statistical data that is available concerning the impact of enlarged standing rules upon the court system. Furthermore, the Commission will consider whether, if recommendations are made to reform the law with

respect to *locus standi*, a general recommendation ought to be made or whether specific recommendations ought to be made with respect to various areas of the law.

The internal staff has completed research on the present state of the law of standing. The Sale of Goods Project, however, particularly during the latter part of the year, has imposed extraordinary demands upon the resources of the Commission. Accordingly, not as much progress on the Project on the Law of Standing has been made as the Commission would have otherwise desired. However, it is expected that the Commission in the coming year will be able once again to turn its attention to this important Project and will be able to make substantial progress towards the completion of its Report.

(j) *Powers of Entry*

During the past year, work was resumed on the long-deferred Project on Powers of Entry. A large number of Ontario statutes give power to enter upon lands, buildings and private dwellings. The purpose of the Project is to examine these statutory powers of entry with reference to the purposes of the statutes under which they are created, in order to determine whether they should continue to exist and, if so, the restrictions and safeguards to which they should be subject.

FUTURE PROGRAMME

It is anticipated that the task of completing the projects now in process will occupy the Commission for the foreseeable future. Nevertheless, we have turned our attention to projects that have been deferred and to new projects for inclusion in our programme. One such Project is the Law of Contract Amendment Project.

The need for a comprehensive review of general contractual principles became increasingly apparent to the Commission during the course of its Project on the Sale of Goods. In our Report on Sale of Goods we recommended that certain changes in the general law of contract, that had a particular bearing on the law of sales, should be incorporated in a revised Sale of Goods Act; for example, we proposed that the parol evidence rule should be abolished in sales transactions, and that the need for consideration to support an agreement made in good faith modifying the terms of an existing contract should likewise be abolished. Other areas of general contract law that required reform, but that had no unique sale of goods dimension, were identified and recommended for consideration as part of a Law of Contract Amendment Project.

With the completion of our Report on Sale of Goods, we have now taken the first steps towards a general and comprehensive review of the law

of contract. Professor Jacob S. Ziegel and Professor Stephen M. Waddams, both of the Faculty of Law of the University of Toronto, have been appointed joint directors of the Contract Law Amendment Project. The objectives of the Project have been defined as follows: (1) to consider the extent to which recommendations made in the Sales Report are suitable for adoption in the wider contractual context; (2) to consider topics identified in the Sales Report as requiring reform; and, (3) to examine additional topics that appear to be in need of review and legislative treatment. A tentative research design has been prepared, and it is proposed that research papers be commissioned on the following, non-exhaustive, list of topics:

1. Reform of the law of consideration, with particular reference to firm offers, modification of contracts (including the rule in *Pinnel's* case), and promissory estoppel.
2. Contracts for the benefit of third parties.
3. Formalities in the formation of contracts (Statute of Frauds requirements), other than those governing contracts for the sale of goods.
4. The doctrine of unconscionability.
5. Good faith in bargaining, including recovery of reliance damages and compensation for benefits conferred on another party.
6. Benefits conferred under ineffective contracts.
7. Mistake and frustration.
8. Penalty and forfeiture clauses.
9. Consequences of illegal contracts.
10. Remedies for innocent and fraudulent misrepresentations.
11. Aspects of the law of damages, including the rule in *Bain v. Fothergill*, the doctrine of anticipatory repudiation and the obligation to mitigate, the recovery of reliance damages, and application of general damage rules to private contracting parties.
12. Contracts by persons under a contractual disability.

A Research Team expert in the law of contract is being formed, and it is anticipated that research on a number of the above mentioned topics will commence in the summer of 1979. The Commission is also considering the establishment of an Advisory Committee, the individual and collective views of which might be sought by members of the Research Team and by the Commission with respect to proposed recommendations.

LIAISON WITH OTHER LAW REFORM AGENCIES

Since the Ontario Law Reform Commission was established in 1964, law reform agencies have been created in many other jurisdictions. We share with these agencies not only the overall objective of law reform, but also individual research projects of common concern. It is, therefore, vital that we should seek to develop and to strengthen our ties with law reform agencies throughout the world. During the past year we have been privileged to receive visitors from these organizations, and have derived much benefit from the opportunity to discuss with them problems of mutual interest.

Our guests, whom we were most pleased to receive, included: Professor A. E. Anton of the Scottish Law Commission; the Honourable Sir John Minogue, Q.C., Law Reform Commissioner for Victoria; Mr. Kevin P. O'Connor, Principal Law Reform Officer, The Law Reform Commission of Australia; Mr. A. R. Godfrey-Smith, Consultant, The Law Reform Commission of Australia; Professor Terry Ross Carney, Faculty of Law, Monash University; and, Miss Rike Luebbe, of the Max-Planck-Institut, Germany.

We were also visited by members of the Trinidad and Tobago Integrity Review Commission. The members we had the good fortune to meet were: Sir Alan Reece, C.M.G., Chairman; the Honourable Mr. Justice Karl de la Bastide; Dr. Stephen Moosai-Maharaj; and, Mr. Leo Seebaran. We were also pleased to meet Mr. Rawlston G. Gonourie, Consul of Trinidad and Tobago.

So too, it was a pleasure to welcome from Japan members of the Institute of Administrative Management, who were on a fact finding tour of the Office of Ombudsman in North America. The members we much enjoyed meeting were: Mr. Teruo Okubo, Staff Officer, Research Division, National Governors Association; Mr. Tetsuo Tsuruoka, Research Fellow, Institute of Administrative Management; and, Professor Yasuo Watanabe of the International Christian University.

Our visitors during this past year also included members and former members of other Canadian Law Reform Agencies: namely, Francis C. Muldoon, Q.C., Chairman, Law Reform Commission of Canada; Mr. J. Douglas Lambert, former Chairman of the Law Reform Commission of British Columbia, and now a member of the British Columbia Court of Appeal; Professor Gordon Bale, Associate Director, The Institute of Law Research and Reform, Alberta; Mr. Iain D. C. Ramsay, Legal Research Officer, The Institute of Law Research and Reform, Alberta; and, Professor Brian A. Grosman, former Chairman of the Law Reform Commission of Saskatchewan. We also derived much pleasure from a visit by the newly appointed Ombudsman for Ontario, the Honourable Donald R. Morand, Q.C.

Mr. Errol Da Costa Chase, First Deputy Chief Parliamentary Counsel of Barbados and Mr. Errol L. Thomas, Parliamentary Counsel, Barbados,

were attached to our Commission during the summer months of 1978. It was good to have these legal officers with us, and we hope that they derived both enjoyment and satisfaction from their experience. We were particularly pleased by a visit to our Commission of the Attorney General for Barbados, the Honourable H. deB. Forde, S.C., M.P.

In August 1978 the Commission was represented by the Chairman and Counsel at a meeting of the Canadian Law Reform Agencies at St. John's, Newfoundland, and, immediately thereafter, by the Chairman at the regular Annual Meeting of the Uniform Law Conference of Canada, in the same city.

During this past year the Commission has taken the opportunity to visit the Law School of the University of Windsor. We were warmly received by the Dean, by members of the Faculty, and by the student body. So too, the Chairman and Counsel were guests of the Muskoka Law Association, and the Chairman spoke of the work of the Commission at the Annual Meeting of the Association of County and District Court Judges of Ontario. We are much obliged to all those whose efforts combined to make our visits both successful and enjoyable.

TABLE OF IMPLEMENTION

Appendix A to this Report contains a list of the Reports prepared and submitted by the Commission since it was formed in 1964, together with a table indicating the extent to which legislation concerning our proposals has been enacted.

ACKNOWLEDGMENTS

Attached hereto as Appendix B is a list of the officers and permanent staff of the Commission. We extend a warm welcome to those who have joined our ranks during the past year: Mr. Eric Gertner, LL.B., B.C.L., as a Legal Research Officer; and Mrs. Enza M. Renda, as a member of our administrative staff. To Mrs. Mary Elizabeth Burt Salter, B.A., LL.B., who left our legal research staff, we express our thanks and best wishes.

We wish also to express our heartfelt thanks and appreciation to Miss A. F. Chute, Secretary to the Commission, and to the administrative staff, for their splendid efforts on our behalf during the past year.

To you, Mr. Attorney, and to the officers of the Ministry, we extend our sincere appreciation and thanks for the manner in which we have been sustained and encouraged in our work.

All of which is respectfully submitted.

Derek Mendes da Costa

DEREK MENDES DA COSTA,
Chairman.

George A. Gale

GEORGE A. GALE,
Vice Chairman.

Richard A. Bell

RICHARD A. BELL,
Commissioner.

W. Gibson Gray

W. GIBSON GRAY,
Commissioner.

James C. McRuer

JAMES C. MCRUER,
Commissioner.

William R. Poole

WILLIAM R. POOLE,
Commissioner.

March 30, 1979

APPENDIX A

REPORTS MADE BY THE ONTARIO LAW REFORM COMMISSION

	Title	Date of Report	Legislation Concerning Commission Proposals
No. 1	The Rule Against Perpetuities	February 1, 1965	<i>The Perpetuities Act</i> , S.O. 1966, c. 113
No. 1A	Supplementary Report on the Rule Against Perpetuities	March 1, 1966	<i>do.</i>
No. 2	The Wages Act; Assignment of Wages	March 3, 1965	<i>The Wages Amendment Act</i> , S.O. 1968, c. 142
No. 3	Personal Property Security Legislation	May 28, 1965	<i>The Personal Property Security Act</i> , S.O. 1967, c. 72
No. 3A	Supplementary Report on Personal Property Security Legislation	May 18, 1966	<i>do.</i>
	The Evidence Act; Admissibility of Business Records	February 16, 1966	<i>The Evidence Amendment Act</i> , S.O. 1966, c. 51, s. 1
	The Mechanics' Lien Act	February 22, 1966	<i>The Mechanics' Lien Act</i> , S.O. 1968-69, c. 65
	Supplementary Report on The Mechanics' Lien Act	May 26, 1967	<i>do.</i>
	Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	See <i>The Mechanics' Lien Amendment Act</i> , S.O. 1975, c. 43 <i>The Ministry of Transportation and Communications Creditors Payment Act</i> , S.O. 1975, c. 44 <i>The Public Works Creditors Payment Repeal Act</i> , S.O. 1975, c. 45
	The Execution Act: Exemption of Goods from Seizure	December 9, 1966	<i>The Execution Amendment Act</i> , S.O. 1967, c. 27
	The Law of Condominium	March 6, 1967	<i>The Condominium Act</i> , S.O. 1967, c. 13 See now <i>The Condominium Act</i> , S.O. 1978, c. 84

Title	Date of Report	Legislation Concerning Commission Proposals
Basis for Compensation on Expropriation	September 21, 1967	<i>The Expropriations Act</i> , S.O. 1968-69, c. 36
The Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	<i>The Sandwich, Windsor and Amherstburg Railway Amendment Act</i> , S.O. 1968, c. 120
Annual Report 1967	January 15, 1968	—
Certain Aspects of the Proposed Divorce Legislation contained in Bill C-187 (Can.)	January 19, 1968	<i>Divorce Act</i> , S.C. 1967-68, c. 24, s. 26
The Proposed Adoption in Ontario of The Uniform Wills Act	February 5, 1968	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 See <i>The Registry Amendment Act</i> , S.O. 1978, c. 8, s. 1
The Protection of Privacy in Ontario	September 10, 1968	See <i>The Consumer Reporting Act</i> , S.O. 1973, c. 97
The Insurance Act, R.S.O. 1960, c. 190, s. 183, as amended by S.O. 1961-62, c. 63, s. 4 (commutation)	October 3, 1968	—
Trade Sale of New Houses and the Doctrine of Caveat Emptor	October 4, 1968	See <i>The Ontario New Home Warranties Plan Act</i> , S.O. 1976, c. 52
Interim Report on Landlord and Tenant Law Applicable To Residential Tenancies	December 10, 1968	<i>The Landlord and Tenant Amendment Act</i> , S.O. 1968-69, c. 58
Limitation of Actions	February 3, 1969	See <i>The Highway Traffic Amendment Act</i> (No. 2), S.O. 1975, c. 37 <i>The Fatal Accidents Amendment Act</i> , S.O. 1975, c. 38 See now <i>The Family Law Reform Act</i> , S.O. 1978, c. 2, s. 60(4) <i>The Trustee Amendment Act</i> , S.O. 1975, c. 39
Annual Report 1968	April 7, 1969	—

Title	Date of Report	Legislation Concerning Commission Proposals
The Age of Majority and Related Matters	June 3, 1969	<i>The Age of Majority and Accountability Act</i> , S.O. 1971, c. 98
Status of Adopted Children	June 3, 1969	<i>The Child Welfare Amendment Act</i> , S.O. 1970, c. 96, s. 23 See now <i>The Child Welfare Act</i> , S.O. 1978, c. 85
Report on Family Law: Part I – Torts	November 4, 1969	<i>The Family Law Reform Act</i> , S.O. 1978, c. 2 (partial implementation)
Report on Section 20 of The Mortgages Act	March 12, 1970	<i>The Mortgages Amendment Act</i> , S.O. 1970, c. 54, s. 1
Report on Family Law: Part II – Marriage	April 6, 1970	<i>The Civil Rights Statute Law Amendment Act</i> , S.O. 1971, c. 50, s. 55 (partial implementation) See now <i>The Marriage Act</i> , S.O. 1977, c. 42 (partial implementation)
Annual Report 1969	April 20, 1970	—
Report on Actions Against Representatives of Deceased Persons	November 30, 1970	<i>The Trustee Amendment Act</i> , S.O. 1971, c. 32, s. 2
The Coroner System in Ontario	January 25, 1971	<i>The Coroners Act</i> , S.O. 1972, c. 98 See <i>The Coroners Amendment Act</i> , S.O. 1978, c. 38
Sunday Observance Legislation	February 26, 1971	<i>The Retail Business Holidays Act</i> , S.O. 1975 (2nd Session), c. 9
Land Registration	March 23, 1971	—
Annual Report 1970	March 31, 1971	—
The Change of Name Act	May 31, 1971	<i>The Change of Name Amendment Act</i> , S.O. 1972, c. 44 See <i>The Change of Name Amendment Act</i> , S.O. 1978, c. 28

Title	Date of Report	Legislation Concerning Commission Proposals
Section 16, The Mortgages Act	June 18, 1971	—
Development Control	September 28, 1971	<i>The Planning Amendment Act</i> , S.O. 1973, c. 168, s. 10
Powers of Attorney	January 11, 1972	—
Occupiers' Liability	January 11, 1972	—
Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
Review of Part IV of The Landlord and Tenant Act	March 31, 1972	<i>The Landlord and Tenant Amendment Act</i> , S.O. 1972, c. 123
Annual Report 1971	March 31, 1972	—
The Non-Possessory Repairman's Lien	October 4, 1972	—
Administration of Ontario Courts, Part I	February 26, 1973	See <i>The Administration of Courts Project Act</i> , S.O. 1975, c. 31 <i>The Judicature Amendment Act</i> (No. 2), S.O. 1977, c. 51, s. 9
Annual Report 1972	March 31, 1973	—
Administration of Ontario Courts, Part II	May 23, 1973	See <i>The Administration of Courts Project Act</i> , S.O. 1975, c. 31
Report on Family Law: Part III – Children	September 25, 1973	<i>The Child Welfare Amendment Act</i> , S.O. 1975, c. 1 (partial implementation) See now <i>The Child Welfare Act</i> , S.O. 1978, c. 85 <i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 (partial implementation) <i>The Children's Law Reform Act</i> , S.O. 1977, c. 41 (partial implementation)
Report on The Solicitors Act	September 28, 1973	—
Report on Motor Vehicle Accident Compensation	November 6, 1973	—

Title	Date of Report	Legislation Concerning Commission Proposals
Administration of Ontario Courts, Part III	December 17, 1973	<p><i>The Judicature Amendment Act</i>, S.O. 1975, c. 30 (partial implementation)</p> <p>See <i>The Administration of Courts Project Act</i>, S.O. 1975, c. 31</p> <p><i>The Small Claims Courts Amendment Act</i>, S.O. 1977, c. 52 (partial implementation)</p>
Report on Family Law: Part IV – Family Property Law	February 8, 1974	<p><i>The Succession Law Reform Act</i>, S.O. 1977, c. 40 (partial implementation)</p> <p><i>The Family Law Reform Act</i>, S.O. 1978, c. 2 (partial implementation)</p> <p>See <i>The Land Titles Amendment Act</i>, S.O. 1978, c. 7</p> <p><i>The Registry Amendment Act</i>, S.O. 1978, c. 8</p>
Report on Family Law: Part V – Family Courts	February 8, 1974	<p>See <i>The Unified Family Court Act</i>, S.O. 1976, c. 85</p> <p><i>The Unified Family Court Amendment Act</i>, S.O. 1978, c. 68</p> <p><i>The Children's Probation Act</i>, S.O. 1978, c. 41 (partial implementation)</p>
Annual Report 1973	May 6, 1974	—
International Convention Providing a Uniform Law on the Form of the International Will	July 3, 1974	<p><i>The Succession Law Reform Act</i>, S.O. 1977, c. 40, s. 42</p>
Annual Report 1974	March 31, 1975	—
Report on Family Law: Part VI – Support Obligations	April 18, 1975	<p><i>The Succession Law Reform Act</i>, S.O. 1977, c. 40 (partial implementation)</p> <p><i>The Family Law Reform Act</i>, S.O. 1978, c. 2</p>

Title	Date of Report	Legislation Concerning Commission Proposals
Mortmain, Charitable Uses and Religious Institutions	February 27, 1976	—
Landlord and Tenant Law	March 15, 1976	—
The Law of Evidence	March 29, 1976	—
Annual Report 1975	March 31, 1976	—
Report on Changes of Name	August 16, 1976	<i>The Vital Statistics Amendment Act</i> , S.O. 1978, c. 81, s. 1 (partial implementation)
Report on The Impact of Divorce on Existing Wills	February 28, 1977	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40, s. 17 (2)
Annual Report 1976	March 31, 1977	—
Annual Report 1977	March 31, 1978	—
Sale of Goods	March 30, 1979	—

Many of the Commission's earlier reports are no longer in print. Those that are still in print may be ordered from Publications Service, Ministry of Government Services, 5th Floor, 880 Bay Street, Toronto, Ontario, Canada, M7A 1N8.

APPENDIX B

OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

Chairman	Derek Mendes da Costa, Q.C., LL.B., LL.M., S.J.D.
Vice Chairman	Honourable George A. Gale, C.C., Q.C., LL.D.
Commissioners	Honourable Richard A. Bell, P.C., Q.C. W. Gibson Gray, Q.C. Honourable James C. McRuer, O.C. LL.D., D.C.L. William R. Poole, Q.C.
Counsel	M. Patricia Richardson, B.A., M.A., LL.B.
Secretary	Miss A. F. Chute
Legal Research Officers	M. A. Springman, B.A., M.A., M.Sc., LL.B. Jennifer K. Bankier, B.A., LL.B. William A. Bogart, B.A., LL.B. Eric Gertner, LL.B., B.C.L.
Administrative Assistant	Mrs. Roslynne F. Mains, B.A.
Secretary to Chairman	Mrs. Stephanie Hlynka
Secretary to Vice Chairman	Mrs. E. N. Page
Secretary to Counsel	Mrs. D. M. Halyburton
Secretary to Administrative Officer	Mrs. B. G. Woodley
Secretaries to Legal Research Officers	Ms. Grace C. Novakowski, B.A. Mrs. E. M. Renda
Receptionist	Miss J. A. M. O'Loughlin

THIRTEENTH ANNUAL REPORT 1979

ONTARIO LAW REFORM COMMISSION

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Ministry of the
Attorney
General

THIRTEENTH ANNUAL REPORT 1979

ONTARIO LAW REFORM COMMISSION



Ministry of the
Attorney
General



The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act* to further the reform of the law, legal procedures and legal institutions. The Commissioners are:

DEREK MENDES DA COSTA, Q.C., LL.B., LL.M., S.J.D., *Chairman*

HONOURABLE GEORGE A. GALE, C.C., Q.C., LL.D.

HONOURABLE RICHARD A. BELL, P.C., Q.C.

* HONOURABLE JAMES C. MCRUER, O.C., LL.D., D.C.L.

WILLIAM R. POOLE, Q.C.

BARRY A. PERCIVAL, Q.C.

M. Patricia Richardson, M.A., LL.B., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are located on the Sixteenth Floor at 18 King Street East, Toronto, Ontario, Canada.

* The Honourable James C. McRuer, the first Chairman of the Commission and Vice Chairman until February, 1977, resigned as a full-time Member of the Commission effective June, 1977. However, Mr. McRuer agreed to remain a Commissioner in relation to the projects on the Law of Trusts and the Enforcement of Judgment Debts, in the development of which he has been much involved.

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Ontario
Law Reform
Commission

To The Honourable R. Roy McMurtry, Q.C.
Attorney General for Ontario

Dear Mr. Attorney:

We have the honour to present the Thirteenth Annual Report of the Ontario Law Reform Commission, for the period April 1, 1979 to March 31, 1980.

INTRODUCTION

This Report deals with the activities of the Commission during the period April 1, 1979 to March 31, 1980. This past year has been an extremely busy and productive year for the Commission.

As anticipated in our last Annual Report, we are pleased to record that we completed our *Report on Products Liability*. In December, 1979, this Report was tabled by the Attorney General in the Legislature. The Commission has also produced two earlier Reports on related topics: namely, the *Report on Consumer Warranties and Guarantees in the Sale of Goods* (1972), and the *Report on Sale of Goods* (1979). The *Report on Products Liability* now completes the first phase of the Commission's Programme on Commercial Law.

The second phase of the Commission's Programme on Commercial Law was commenced during the past year by the Commission adding to its programme a new project, the Law of Contract Amendment project.

At present, the Commission has ten projects on its programme. It is apparent that a great deal of research, balance and coordination is involved in the task of bringing these projects forward in an orderly fashion. Two major projects, the project on the Law of Trusts and the project on the Enforcement of Judgment Debts, are near conclusion. We expect that we will complete our *Report on the Law of Trusts*, and possibly our *Report on Enforcement of Judgment Debts* in the coming year.

During the past year there has been noteworthy legislative activity concerning matters upon which we have previously reported. *The Powers of Attorney Act, 1979*, and *The Religious Organizations' Lands Act, 1979*, substantially implement, respectively, our *Report on Powers of Attorney* (1972) and the recommendations of the Commission concerning religious institutions contained in the *Report on Mortmain, Charitable Uses and Religious Institutions* (1976). Bill 202, being a Bill introducing *The Occupiers' Liability Act, 1980*, contains in proposed legislative form many of the recommendations formulated by the Commission in the *Report on Occupiers' Liability* (1972) including, with exceptions, the basic recommendation that there should be a common duty of care. Needless to say, the Commission has derived much satisfaction from this continued implementation of its Reports.

The past year has also seen change in the membership of the Commission. On November 27, 1979, W. Gibson Gray, Q.C., was appointed a Justice of the Supreme Court of Ontario. On January 30, 1980, the Premier of Ontario, the Honourable William G. Davis, Q.C., announced the appointment of Barry A. Percival, Q.C., of Toronto as a Member of the Ontario Law Reform Commission to succeed Mr. Gray.

We would mention one other event of significance that occurred during the past year. In the *Report on Sale of Goods*, the Commission pointed out that it

would be unfortunate if the adoption of the revised Act, recommended by the Commission, were to create unintended impediments to the free flow of goods between the Provinces. Accordingly, we urged the early involvement of the Uniform Law Conference of Canada to explore the possibility of securing the adoption of a Uniform Sale of Goods Act, hopefully based on our draft Act. At the Sixty-first Annual Meeting of the Uniform Law Conference, held at Saskatoon in August, 1979, the Uniform Law Section of the Conference, pursuant to the Report of the Ontario Commissioners, established a Committee on the Sale of Goods. The mandate of this Committee is to consider the need for uniform sale of goods legislation, and, if such a need exists, to assess the utility of the Ontario Law Reform Commission's *Report on Sale of Goods* as a basis for such a uniform law. This Committee has been active and it is to be hoped that its Report will be presented to the 1981 meeting of the Uniform Law Conference.

THE PROGRAMME: REFERRED MATTERS

Section 2(1)(d) of *The Ontario Law Reform Commission Act* requires the Commission to inquire into and to consider any matter relating to any subject referred to it by the Attorney General. No new matters were referred to the Commission during the period covered in this Report. During the year, research on a prior Reference, the Class Actions project, continued.

PROJECTS IN PROCESS

Class Actions

Work on the Class Actions project continued during the past year and a substantial portion of the research has now been completed.

The Class Actions project involves an investigation of the desirability of the development of class actions beyond the confines of Rule 75, which governs the bringing of class actions in Ontario. The terms of reference of the project include an investigation of the potential impact of class actions on the Ontario court system, and an examination of alternatives to class actions.

During the course of the project, the Commission has considered the need, if any, for an expanded class action mechanism in Ontario, and, in this connection, has discussed research papers on the following topics: the historical origins of class actions; the status of class actions in Ontario under Rule 75; present alternatives to class actions, such as consolidation, joinder and test cases; issues of procedural and substantive law relating to class actions; and, the costs and benefits of class actions, as evaluated in the light of existing empirical evidence. The Commission has also considered a research paper dealing with alternative class action models, and an economic analysis of class actions prepared by outside experts. At the present time, meetings are being held to discuss a number of research papers that deal with the following issues: whether a class action should require certification before it can be permitted to proceed as a class action; and

the tests, if any, a plaintiff should be required to meet before a class action can be certified.

Scheduled for discussion during the coming year are research papers dealing with the important issues of opting in and opting out, notice, damages, discovery, *res judicata*, and costs. In addition, research will be completed on a number of topics, including settlement, jurisdictional and choice of law issues, limitation periods and defendant class actions.

THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

Under its founding statute, the Commission may inquire into and consider any matter relating to reform of the law. Accordingly, the Commission may initiate research on its own motion. During the past year, two projects were commenced in this way: namely, the Law of Contract Amendment project, and the Contribution Among Wrongdoers project.

(a) COMPLETED PROJECTS

Products Liability

In October, 1979, the Commission submitted its *Report on Products Liability* to the Attorney General. Included as an appendix to the Report is a proposed *Products Liability Act* designed to revise the law relating to products liability in Ontario. The Products Liability project, initiated by the Commission in March, 1977, was a direct outgrowth of the Commission's study of the law relating to the sale of goods in Ontario. During the course of that study, it became apparent that the existing products liability law of Ontario, with its anomalies and inconsistencies, was not adequate, particularly in light of the technological and marketing developments of recent years.

The most significant recommendation of the Commission is the proposal for the legislative recognition of a principle of strict liability in tort. The Commission recommends that this principle should apply not only where a person supplies a defective product that causes injury, but also where a person supplies a product and makes a false statement concerning the product, reliance upon which causes injury, whether or not the reliance is that of the person injured. The Report recommends that the principle of strict liability should cover personal injury and damage to property, together with economic loss consequent thereon. However, this recommendation does not extend to property used in the course of carrying on a business, nor to pure economic loss. In respect of these latter categories of loss, it should be noted that it is also recommended that the rights and liabilities created by the proposed *Products Liability Act* should supplement any rights and liabilities already extant in law.

The Report recommends that the proposed principle of strict liability should apply to any person who supplies a product in the course of his business, so long

as the product is of a kind that it is his business to supply, and even though he has not supplied products of the same kind previously or the product is supplied for promotional purposes. The Report further recommends that the proposed principle of strict liability should comprehend all products, whether tangible or intangible, and whether attached to or incorporated into real or personal property. However, it is recommended that the proposed principle of strict liability should not apply to a person who supplies a product in a non-business context.

The Commission recommends that the class of person entitled to recover under the proposed principle of strict liability should not be restricted in any way other than by the general tort limitations of proximity and causation. In particular, the Report recommends that the bases of liability now contained in Part V of *The Family Law Reform Act, 1978*, should be broadened so as to enable dependants' claims to be founded upon a showing of the recommended principle.

Turning to the subject of limitations and defences, the Report recommends as follows: (1) that there should be no monetary limit upon the compensation that may be recovered in an action based upon the proposed principle of strict liability; (2) that there should be no special limitation or cut-off period applicable to claims under the principle; and, (3) that the defences of assumption of risk and contributory negligence should be available in respect of claims brought under the principle.

The Report discusses in some detail the rights of contribution and indemnity that may be claimed under the proposed *Products Liability Act*. Consistent with the philosophy underlying the recommendation for the adoption of a principle of strict liability, the Report recommends that a supplier who is subjected to liability thereunder should be entitled to indemnification from any prior supplier of the product who also would be liable under the proposed Act. The Report recommends that, in addition to the right to claim indemnification, suppliers should be entitled to claim contribution from any person, whether another supplier or not, who also would be liable to the person injured. Although, as between themselves, suppliers may contract out of the provisions respecting contribution and indemnity, the Commission recommends that a supplier should not be able to exclude or restrict liability to a person claiming under the proposed principle of strict liability. The Report contains recommendations respecting contribution and indemnity in case of settlement, and also recommends a special limitation period for the institution of proceedings for contribution or for indemnity.

Included in the Report are a number of recommendations in respect of the jurisdiction of Ontario courts to entertain an action under the proposed *Products Liability Act*, as well as the choice of law rules to govern actions brought pursuant to the proposed Act. It is recommended that an action under the proposed Act be maintainable where, apart from the Act, the court would have jurisdiction, or where the supplier against whom the action is brought carried on business in Ontario at the time of the supply of the product in question, whether or not the prod-

uct was purchased or otherwise acquired in Ontario. The choice of law rules adopted by the Commission are as follows: in an action under the proposed *Products Liability Act*, the internal law of Ontario should apply where that law now is applicable, or where the supplier carried on business in Ontario at the time of the supply of the product. The Report recommends that any party to an action should be capable of being served out of Ontario in the manner prescribed by the rules of court. The constitutionality of the conflict of laws rules is canvassed in some detail in the Report.

Finally, the *Report on Products Liability* includes a number of miscellaneous proposals, including a recommendation that the Crown be bound by the proposed *Products Liability Act*, and a recommendation that all actions brought under the proposed Act be tried before a judge without a jury.

(b) PROJECTS IN PROCESS

1. *The Law of Trusts*

During the past year the Commission considered and approved in principle a draft *Report on the Law of Trusts* and a draft revised *Trustee Act*, containing the Commission's recommendations for reform of the law of trusts. The draft *Trustee Act* is now being reviewed, and the draft Report is undergoing the final editing process. It is anticipated that the Report and accompanying draft Act will be published before the end of the coming year.

2. *Administration of Estates of Deceased Persons*

This project, which originally formed part of the Commission's project on the Law of Trusts, was added to the Commission programme in November, 1977, and has proceeded under the direction of Professor George Alexandrowicz of Queen's University.

The research on the project is now substantially complete, and includes nine research papers on the following topics: the office of the personal representative; the transfer of assets of the estates of deceased persons; estates of foreign decedents; the position of the beneficiary; rights of creditors; and, Surrogate Court procedure. The objective of the project is a new *Administration of Estates Act*, which would bring together and revise relevant portions of *The Trustee Act*, *The Devolution of Estates Act*, and the provisions governing practice under *The Surrogate Courts Act* and Rules. The new Act would also codify and revise a number of the common law doctrines that now govern estate administration.

It is expected that consideration of the completed research papers will commence in the near future. In formulating its recommendations, the Commission is fortunate to have the benefit of the views of an Advisory Committee of experts in the law governing estate administration, constituted under the chairmanship of Malcolm S. Archibald, Q.C.

3. The Hague Convention Concerning the International Administration of the Estates of Deceased Persons

The International Convention, which initially formed a separate project, is now being considered together with the Commission's project on the Administration of Estates of Deceased Persons. In January, 1980, the Commission commenced consideration of a research paper prepared by Professor Marvin Baer of Queen's University, dealing with the International Convention in the context of a general consideration of estates of foreign decedents. The Commission hopes to resume consideration of the Convention, and the question whether it should be given effect in Ontario, in the near future. It has not yet been decided whether to submit a separate Report on the Estates of Foreign Decedents, including the International Convention, or to deal with these matters in the Commission's final *Report on the Administration of Estates of Deceased Persons*.

4. Basic Principles of Land Law and

5. The Law of Mortgages

Unfortunately, the Commission has not been able to proceed with these two important projects as speedily as it would have wished. Work on the projects has been deferred on several occasions due to the pressure of other commitments.

In past years, three substantial research papers have been prepared in the project on Basic Principles of Land Law, and during the past year, a comprehensive research design has been submitted for the project on the Law of Mortgages.

In the view of the Commission, the projects are interrelated and should, if practicable, proceed concurrently. Arrangements for the resumption of research in the Mortgages project are underway. Subject to the availability of personnel and resources, the Commission hopes to be in a position to continue study of the Basic Principles of Land Law during the coming year.

6. Enforcement of Judgment Debts

In some areas, the substantive law and procedural rules of debtor-creditor relations in Ontario have manifested a very uneven and *ad hoc* development; in other areas, this relationship is governed by antiquated statutory and common law principles inherited from medieval England. It was in response to prevalent uncertainties, ambiguities and inconsistencies in the present law that the Commission initiated its detailed study of all facets of debtor-creditor law and practice.

The deficiencies in the present enforcement system—or, more accurately, enforcement systems—are structural, administrative, substantive and procedural. Uncoordinated and unintegrated enforcement measures are undertaken by parallel enforcement structures to enforce Supreme Court, County and District Court, Small Claims Court and Provincial Court (Family Division) judgments

and orders, resulting in a substantial degree of duplication and waste. Accordingly, the Commission has been considering the replacement of the existing enforcement structures with a comprehensive, fully integrated enforcement system, coordinating all enforcement measures in respect of judgments and orders from all courts of this Province.

Because of substantive and procedural deficiencies in the present law, the Commission has also been examining the enforcement remedies that should be available to a creditor. We have considered whether uniform rules should apply to the enforcement of judgments and orders from different court levels. The Commission has completed consideration of the following topics: execution against land; seizure and sale of personal property; creditors' relief and priorities; garnishment of wages and other debts; equitable execution; and, judgment debtor and third party examinations.

A number of draft chapters of the final *Report on Enforcement of Judgment Debts* have been written and considered by the Commission, including a revised version of the Commission's unpublished Interim Report on the Orderly Payment of Debts. This Report, which deals with the proposed federal consolidation and composition of debts scheme, has been reviewed and revised in the light of proposed new bankruptcy legislation, and will be included as a chapter in the Commission's final Report.

The Commission also has commenced work on two other areas of debtor-creditor law. A research paper on pre-judgment enforcement remedies is now being prepared, and will be considered by the Commission in the near future. In addition, a research paper on fraudulent conveyances and fraudulent preferences has been prepared and discussed. Upon consideration, the Commission has decided that fraudulent transactions should form the subject of a separate Report.

The latter Report will be concerned with a review of *The Fraudulent Conveyances Act*, R.S.O. 1970, c. 182, and *The Assignments and Preferences Act*, R.S.O. 1970, c. 34. These statutes, particularly *The Fraudulent Conveyances Act*, which is derived from Elizabethan legislation, have remained virtually unchanged over the years. At present, the law is characterized by ambiguities, inconsistencies and gaps. The Report will consider whether the law governing voidable transactions should continue to be premised on the transferor's fraudulent intent. In investigating alternatives, the Commission has examined the feasibility and desirability of a regime in which the critical issue is the effect of the transaction on the ability of the transferor's creditors to be paid, rather than the transferor's state of mind when the transaction was executed. Work on preparation of a final Report will commence with the completion of the Enforcement of Judgment Debts project.

In our examination of debtor-creditor law, we continue to be ably assisted by David E. Baird, Q.C., of Toronto.

7. Declarations of Marital Status

The Commission's project on Declarations of Marital Status is the only topic of the Family Law project that remains outstanding. The project deals with the jurisdiction of the court to declare the validity of an existing marriage, or of a foreign divorce or annulment, according to the law of Ontario. As a result of demands that have been made upon Commission resources by other projects, it has been necessary to accord the Declarations of Marital Status project a relatively low priority. However, the Commission intends to resume work on the project as soon as practicable.

8. The Law of Standing

The Law of Standing project involves an examination of the question whether the rules that now govern the status of a private individual to litigate in respect of public rights should be broadened. As a general proposition, it may be said that the present law of standing, or status to sue, has restricted public interest litigation. In order to challenge a statute or an action of a government or public agency, or to seek an injunction or damages in respect of a public nuisance, an individual must demonstrate that he has sustained damages greater than those suffered by other members of the public, or that he has some special private interest, usually a financial or property interest.

The matters of standing and class actions are conceptually distinct; however, liberalization of the rules governing the right to sue in the public interest and the bringing of class actions would serve a common function, by permitting increased access to the courts by individuals.

Although, in the early stages of the project, a background research paper was prepared by the internal legal staff dealing with the present state of the law of standing, priority has been given to the Minister's Reference on Class Actions. The Commission, however, has recently commissioned a research paper dealing with reform of the law of standing. It is anticipated that this research paper will be submitted to the Commission in the autumn of 1980, and that the Commission will be able to commence discussion of the issues raised in the paper shortly thereafter.

9. Powers of Entry

The Powers of Entry project involves an examination of Ontario statutes that give power to enter upon lands, buildings and private dwellings. In past years, the Commission has prepared a preliminary research design and compiled a table of statutes containing powers of entry. Unfortunately, recent efforts to bring the project forward have proved unsuccessful, and negotiations to appoint a Research Director are now in progress.

10. Law of Contract Amendment

The Law of Contract Amendment project was added formally to the Commission's programme in April, 1979, although preliminary steps towards organi-

zation of the project had been undertaken prior to that date. The project had its genesis in the Commission's Sale of Goods project, where the need for a comprehensive review of general contractual principles became apparent from the Commission's examination of the law of contract as it affects the sale of goods.

The Commission wishes to encourage participation by interested parties in the project as it develops. Accordingly, one initiative taken by the Commission was to advertise for submissions on problems relating to the law of contract. In addition, the Commission plans to establish an Advisory Group, whose members will be consulted by the Research Team and by the Commission in formulating recommendations.

The Law of Contract Amendment project is divided into three Phases. Phase I is concerned with formational aspects of the law of contract, and research papers have been received on the following topics:

- (1) Consideration, including firm offers, modifications, part payment, forgiveness of debts, reliance, past consideration, charitable subscriptions, compromises and intention;
- (2) The seal and nominal consideration; offer and acceptance; and, contracts for the benefit of third parties;
- (3) The formalities for the enforcement of contracts, that is, Statute of Frauds requirements (other than those involving contracts of sale of goods); and,
- (4) A comparative study of consideration.

Phases II and III deal, in general, with the substance of contractual obligations. Research papers have been commissioned in respect of the following topics, which have been allocated to Phase II:

- (1) Unconscionability;
- (2) Misrepresentation, including the relationship of misrepresentation to warranty, negligence, mistake, the Commission's Sale of Goods proposals, and consumer protection and business practices legislation, and also the question of contractual exclusion of liability for misrepresentations;
- (3) Mistake and frustration;
- (4) Illegality; and,
- (5) Penalty and forfeiture clauses.

The following topics are to be included in Phase III:

- (1) Good faith and restitution;
- (2) Aspects of the law of damages;
- (3) Contracts by persons under disability; and,
- (4) Equitable remedies for breach of contract.

The Commission expects to receive a Research Report dealing with the first Phase of the project in June, 1980, and to commence consideration of the research papers in Phase I in the autumn. While it is too early in the project to announce a rigid schedule, it is anticipated that the Commission will issue separate Reports covering each Phase of the project, and that the first Report will be completed by the summer of 1981.

The project is being directed ably by joint Project Directors, Professor Jacob S. Ziegel and Professor Stephen M. Waddams, both of the Faculty of Law, University of Toronto.

11. *Contribution Among Wrongdoers*

During the past year, as a result of a submission received in response to a Notice published by the Commission inviting suggestions for reform of the law, the Commission added to its programme a project on the Law of Contribution Among Wrongdoers. The present law governing the allocation of loss between two or more persons who are responsible for the same injury is highly unsatisfactory, and has been the subject of review in other jurisdictions. As the law of contributory negligence also involves the apportionment of loss, the Commission has decided to include a review of this area of the law in the project.

At common law, subject to a few exceptions, there was no contribution between wrongdoers. Where two persons contributed to the same loss or damage, the plaintiff could recover against either of them, and there was no right in the person against whom the plaintiff recovered to claim contribution from the other wrongdoer. In addition, at common law, where the plaintiff was negligent and was found to have contributed to his own injury, this constituted a complete defence to the plaintiff's claim. The harshness of these rules was modified by statute in Ontario. *The Negligence Act* authorizes contribution and indemnity among persons whose negligence has contributed to the same loss or injury, and also abrogates the rule that contributory negligence constitutes a complete defence to a plaintiff's claim. The purpose of the Commission's Contribution project is to consider whether the concepts of contribution and contributory negligence should be extended beyond *The Negligence Act*, to torts other than negligence and to causes of action arising in contract.

In December, 1979, the Commission considered a research paper prepared by a member of its internal staff and settled, tentatively, the terms of reference of the project. It is hoped that a Project Director will be appointed in the near future and that research can commence during the coming summer months.

FUTURE PROGRAMME

As we have indicated in the Introduction, it is not an easy task to formulate priorities and to allocate limited resources among our many projects, all of which are important and call for attention. The anticipated completion during the coming year of the project on the Law of Trusts, and the possible completion of the project on the Enforcement of Judgment Debts, will obviously lessen the pressures that are now upon the Commission. Thereafter, we will be able to concentrate more fully on the projects that remain on our programme, and to consider possible additions thereto.

LIAISON WITH OTHER JURISDICTIONS

In the process of law reform it is important to consider developments that occur elsewhere. Accordingly, we always regard it as a privilege to receive visitors from outside our own jurisdiction.

Our visitors, whom we were most pleased to receive, included: Sir William Randolph Douglas, the Chief Justice of Barbados; the Honourable Mr. Justice Didcott, Supreme Court of Natal, South Africa; the Honourable Mr. Justice Lameck Mfalila, High Court of Tanzania, the United Republic of Tanzania; His Honour Judge Ioannis Boyadjis, Senior District Judge, Nicosia, Cyprus; Sir Rupert Cross, Vinerian Professor of English Law, All Souls College, Oxford University; Michael J. Owen, Esq., Barrister and Solicitor of the Supreme Court of Victoria, Australia; Professor J. Phillips of the Faculty of Law, University of Melbourne, Australia; Professor Kenneth C. Sutton of the Faculty of Law, University of Queensland, Australia; Professor Jennifer Temkin of the Department of Law, London School of Economics and Political Science, University of London; and, Professor Graham Zellick of the Faculty of Laws, Queen Mary College, University of London.

Our visitors during this past year included members of other Canadian Law Reform Agencies: namely, Arthur L. Close, Esq., Commissioner, Law Reform Commission of British Columbia; W. H. Hurlburt, Esq., Q.C., Director, The Institute of Law Research and Reform, Alberta; and, Dr. Olive M. Stone, formerly of The Institute of Law Research and Reform. Not infrequently it happens that the research interests of the Canadian Law Reform Agencies coincide, and we are grateful for every opportunity to discuss problems of mutual interest.

In August, 1979 the Commission was represented by the Chairman and Counsel at a meeting of the Canadian Law Reform Agencies at Saskatoon and, immediately thereafter, by the Chairman, at the Sixty-first Annual Meeting of the Uniform Law Conference of Canada, in the same city.

During this past year, the Commission has taken the opportunity to visit five Law Schools, four within Ontario and one in the Province of Quebec. The Chairman and Counsel visited the Law Schools of the University of Western Ontario, and the University of Windsor; the Chairman, the Honourable R. A. Bell and Counsel visited the Law School of the University of Ottawa; the Chairman and M. A. Springman, Esq., visited Queen's University; and, the Chairman visited the Law School of McGill University. We were warmly received by the Deans of these Law Schools, by members of the Faculty and by the student body. So too, the Chairman was the guest of the Cochrane Law Association and the County of York Law Association, and spoke of the work of the Commission. We are much obliged to all those whose efforts combined to make our visits both successful and enjoyable.

TABLE OF IMPLEMENTATION

Attached to this Report as Appendix A is a list of the Reports that have been prepared and submitted by the Commission since its inception in 1964, together with a table setting out the extent to which legislation concerning our proposals has been enacted.

ACKNOWLEDGMENTS

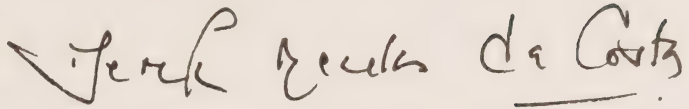
Attached to this Report are two additional appendices relating to the membership and staff of the Commission. In Appendix B, we schedule two formal documents dealing with changes in the membership of the Commission that have occurred during the past year.

Appendix C consists of a list of the officers and permanent staff of the Commission. To those who have joined us during the past year, we extend a sincere welcome: Ann M. Merritt, B.A., LL.B., Larry M. Fox, Esq., LL.B., and Pamela M. Gibson, B.A., LL.B., as members of the legal research staff; and Miss Mary M. O'Hara, as a member of the administrative staff. The Commission regrets the loss of several of its administrative and legal staff during the past year. To Miss Julie O'Loughlin of the administrative staff we express our thanks and best wishes. To Jennifer K. Bankier and William A. Bogart, Esq., legal research officers, we acknowledge with gratitude our debt for their contribution to the work of the Commission, and in particular to the Class Actions project.

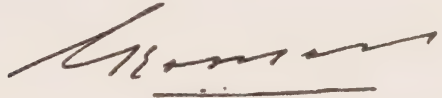
Our sincere thanks are also extended to the Secretary, Miss A. F. Chute, and to the administrative staff for all they have done to assist the Commission during the year.

May we also express our appreciation and thanks to you, Mr. Attorney, and to your Ministry, for the continuing interest, assistance and co-operation we have been afforded.

All of which is respectfully submitted.



Derek Mendes da Costa,
Chairman.



George A. Gale,
Vice Chairman.



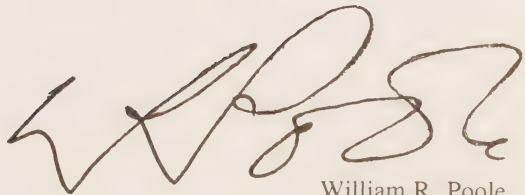
Richard A. Bell,
Commissioner.



James C. McRuer,
Commissioner.



Barry A. Percival,
Commissioner.



William R. Poole,
Commissioner.

March 31, 1980

APPENDIX A

REPORTS MADE BY THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Legislation Concerning Commission Proposals
No. 1 The Rule Against Perpetuities	February 1, 1965	<i>The Perpetuities Act</i> , S.O. 1966, c. 113
No. 1A Supplementary Report on the Rule Against Perpetuities	March 1, 1966	<i>do.</i>
No. 2 The Wages Act; Assignment of Wages	March 3, 1965	<i>The Wages Amendment Act</i> , S.O. 1968, c. 142
No. 3 Personal Property Security Legislation	May 28, 1965	<i>The Personal Property Security Act</i> , S.O. 1967, c. 72
No. 3A Supplementary Report on Personal Property Security Legislation	May 18, 1966	<i>do.</i>
The Evidence Act; Admissibility of Business Records	February 16, 1966	<i>The Evidence Amendment Act</i> , S.O. 1966, c. 51, s. 1
The Mechanics' Lien Act	February 22, 1966	<i>The Mechanics' Lien Act</i> , S.O. 1968-69, c. 65
Supplementary Report on The Mechanics' Lien Act	May 26, 1967	<i>do.</i>
Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	See <i>The Mechanics' Lien Amendment Act</i> , S.O. 1975, c. 43 <i>The Ministry of Transportation and Communications Creditors Payment Act</i> , S.O. 1975, c. 44 <i>The Public Works Creditors Payment Repeal Act</i> , S.O. 1975, c. 45
The Execution Act: Exemption of Goods from Seizure	December 9, 1966	<i>The Execution Amendment Act</i> , S.O. 1967, c. 27
The Law of Condominium	March 6, 1967	<i>The Condominium Act</i> , S.O. 1967, c. 13 See now <i>The Condominium Act</i> , S.O. 1978, c. 84

Title	Date of Report	Legislation Concerning Commission Proposals
Basis for Compensation on Expropriation	September 21, 1967	<i>The Expropriations Act</i> , S.O. 1968-69, c. 36
The Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	<i>The Sandwich, Windsor and Amherstburg Railway Amendment Act</i> , S.O. 1968, c. 120
Annual Report 1967	January 15, 1968	—
Certain Aspects of the Proposed Divorce Legislation contained in Bill C-187 (Can.)	January 19, 1968	<i>Divorce Act</i> , S.C. 1967-68, c. 24, s. 26
The Proposed Adoption in Ontario of The Uniform Wills Act	February 5, 1968	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 See <i>The Registry Amendment Act</i> , S.O. 1978, c. 8, s. 1
The Protection of Privacy in Ontario	September 10, 1968	See <i>The Consumer Reporting Act</i> , S.O. 1973, c. 97
The Insurance Act, R.S.O. 1960, c. 190, s. 183, as amended by S.O. 1961-62, c. 63, s. 4 (commutation)	October 3, 1968	—
Trade Sale of New Houses and the Doctrine of Caveat Emptor	October 4, 1968	See <i>The Ontario New Home Warranties Plan Act</i> , S.O. 1976, c. 52
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	<i>The Landlord and Tenant Amendment Act</i> , S.O. 1968-69, c. 58
Limitation of Actions	February 3, 1969	See <i>The Highway Traffic Amendment Act</i> (No. 2), S.O. 1975, c. 37 <i>The Fatal Accidents Amendment Act</i> , S.O. 1975, c. 38 See now <i>The Family Law Reform Act</i> , S.O. 1978, c. 2, s. 60(4) <i>The Trustee Amendment Act</i> , S.O. 1975, c. 39

Title	Date of Report	Legislation Concerning Commission Proposals
Annual Report 1968	April 7, 1969	—
The Age of Majority and Related Matters	June 3, 1969	<i>The Age of Majority and Accountability Act</i> , S.O. 1971, c. 98
Status of Adopted Children	June 3, 1969	<i>The Child Welfare Amendment Act</i> , S.O. 1970, c. 96, s. 23 See now <i>The Child Welfare Act</i> , S.O. 1978, c. 85
Report on Family Law: Part I—Torts	November 4, 1969	<i>The Family Law Reform Act</i> , S.O. 1978, c. 2 (partial implementation)
Report on Section 20 of The Mortgages Act	March 12, 1970	<i>The Mortgages Amendment Act</i> , S.O. 1970, c. 54, s. 1
Report on Family Law: Part II—Marriage	April 6, 1970	<i>The Civil Rights Statute Law Amendment Act</i> , S.O. 1971, c. 50, s. 55 (partial implementation) See now <i>The Marriage Act</i> , S.O. 1977, c. 42 (partial implementation)
Annual Report 1969	April 20, 1970	—
Report on Actions Against Representatives of Deceased Persons	November 30, 1970	<i>The Trustee Amendment Act</i> , S.O. 1971, c. 32, s. 2
The Coroner System in Ontario	January 25, 1971	<i>The Coroners Act</i> , S.O. 1972, c. 98 See <i>The Coroners Amendment Act</i> , S.O. 1978, c. 38
Sunday Observance Legislation	February 26, 1971	<i>The Retail Business Holidays Act</i> , S.O. 1975 (2nd Session), c. 9
Land Registration	March 23, 1971	See <i>The Corporations Tax Amendment Act (No. 2)</i> , S.O. 1979, c. 28
Annual Report 1970	March 31, 1971	—

Title	Date of Report	Legislation Concerning Commission Proposals
The Change of Name Act	May 31, 1971	<i>The Change of Name Amendment Act</i> , S.O. 1972, c. 44 See <i>The Change of Name Amendment Act</i> , S.O. 1978, c. 28
Section 16, The Mortgages Act Development Control	June 18, 1971 September 28, 1971	— <i>The Planning Amendment Act</i> , S.O. 1973, c. 168, s. 10 See now <i>The Planning Amendment Act</i> , S.O. 1979, c. 59
Powers of Attorney	January 11, 1972	<i>The Powers of Attorney Act</i> , S.O. 1979, c. 107
Occupiers' Liability	January 11, 1972	—
Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
Review of Part IV of The Landlord and Tenant Act	March 31, 1972	<i>The Landlord and Tenant Amendment Act</i> , S.O. 1972, c. 123
Annual Report 1971	March 31, 1972	—
The Non-Possessory Repairman's Lien	October 4, 1972	—
Administration of Ontario Courts, Part I	February 26, 1973	See <i>The Administration of Courts Project Act</i> , S.O. 1975, c. 31 <i>The Judicature Amendment Act (No. 2)</i> , S.O. 1977, c. 51, s. 9
Annual Report 1972	March 31, 1973	—
Administration of Ontario Courts, Part II	May 23, 1973	See <i>The Administration of Courts Project Act</i> , S.O. 1975, c. 31
Report on Family Law: Part III—Children	September 25, 1973	<i>The Child Welfare Amendment Act</i> , S.O. 1975, c. 1 (partial implementation) See now <i>The Child Welfare Act</i> , S.O. 1978, c. 85 <i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 (partial implementation) <i>The Children's Law Reform Act</i> , S.O. 1977, c. 41 (partial implementation)

Title	Date of Report	Legislation Concerning Commission Proposals
Report on The Solicitors Act	September 28, 1973	—
Report on Motor Vehicle Accident Compensation	November 6, 1973	—
Administration of Ontario Courts, Part III	December 17, 1973	<p data-bbox="703 309 969 384"><i>The Judicature Amendment Act</i>, S.O. 1975, c. 30 (partial implementation)</p> <p data-bbox="703 403 954 478">See <i>The Administration of Courts Project Act</i>, S.O. 1975, c. 31</p> <p data-bbox="703 497 943 597"><i>The Small Claims Courts Amendment Act</i>, S.O. 1977, c. 52 (partial implementation)</p>
Report on Family Law: Part IV—Family Property Law	February 8, 1974	<p data-bbox="703 616 936 717"><i>The Succession Law Reform Act</i>, S.O. 1977, c. 40 (partial implementation)</p> <p data-bbox="703 736 936 811"><i>The Family Law Reform Act</i>, S.O. 1978, c. 2 (partial implementation)</p> <p data-bbox="703 830 899 905">See <i>The Land Titles Amendment Act</i>, S.O. 1978, c. 7</p> <p data-bbox="743 924 954 999"><i>The Registry Amendment Act</i>, S.O. 1978, c. 8</p>
Report on Family Law: Part V—Family Courts	February 8, 1974	<p data-bbox="703 1017 932 1093">See <i>The Unified Family Court Act</i>, S.O. 1976, c. 85</p> <p data-bbox="743 1111 932 1204"><i>The Unified Family Court Amendment Act</i>, S.O. 1978, c. 68</p> <p data-bbox="743 1222 958 1347"><i>The Children's Probation Act</i>, S.O. 1978, c. 41 (partial implementation)</p>
Annual Report 1973	May 6, 1974	—
International Convention Providing a Uniform Law on the Form of the International Will	July 3, 1974	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40, s. 42

Title	Date of Report	Legislation Concerning Commission Proposals
Annual Report 1974	March 31, 1975	—
Report on Family Law: Part VI—Support Obligations	April 18, 1975	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 (partial implementation) <i>The Family Law Reform Act</i> , S.O. 1978, c. 2
Mortmain, Charitable Uses and Religious Institutions	February 27, 1976	<i>The Religious Organizations' Lands Act</i> , S.O. 1979, c. 45 <i>The Anglican Church of Canada Act</i> , S.O. 1979, c. 46 <i>The Registry Amendment Act</i> , S.O. 1979, c. 94, s. 17
Landlord and Tenant Law	March 15, 1976	—
The Law of Evidence	March 29, 1976	—
Annual Report 1975	March 31, 1976	—
Report on Changes of Name	August 16, 1976	<i>The Vital Statistics Amendment Act</i> , S.O. 1978, c. 81, s. 1 (partial implementation)
Report on The Impact of Divorce on Existing Wills	February 28, 1977	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40, s. 17(2)
Annual Report 1976	March 31, 1977	—
Annual Report 1977	March 31, 1978	—
Report on Sale of Goods	March 30, 1979	—
Annual Report 1978	March 30, 1979	—
Report on Products Liability	November 16, 1979	—

Many of the Commission's earlier reports are no longer in print. Those that are still in print may be ordered from Publications Service, Ministry of Government Services, 5th Floor, 880 Bay Street, Toronto, Ontario, Canada, M7A 1N8.

APPENDIX B

1. Extract from the Minutes of the Ontario Law Reform Commission, December 10, 1979.

The following motion presented by the Honourable R. A. Bell, P.C., Q.C., and seconded by William R. Poole, Q.C., was passed by unanimous vote:

That the members of the Commission record their pleasure and gratification upon the appointment of their long-time colleague, W. Gibson Gray, Q.C. as a Justice of the Supreme Court of Ontario, but couple it with a great sense of loss that his experience, scholarship and wisdom will no longer be available to Commission meetings.

A member of the Commission since its establishment in 1964, Mr. Gray has been an active participant in all the Commission's deliberations. To the discussions and debates, he contributed a profound knowledge of the law, extensive experience as a leader of the Bar, (which culminated in the eminence of Treasurer of the Law Society of Upper Canada), a special analytical talent and always a warm and friendly attitude. The imprint of his contributions appears throughout the Commission's reports.

His former colleagues congratulate him upon his elevation to the Bench and express warmest wishes for a successful and productive judicial career. The Commission's loss means that the Ontario Bench has attracted the services of a leading barrister who, we believe, will become a very distinguished jurist.

2. Statement issued by the Office of the Premier of Ontario, January 30, 1980.

The appointment of Barry A. Percival, of Toronto, to the Ontario Law Reform Commission was announced today by Premier William Davis.

Mr. Percival, whose three-year term is effective immediately, replaces W. Gibson Gray who has been appointed to the Supreme Court of Ontario.

Mr. Percival, who was born in Noranda, Quebec, was educated in North Bay and also attended Queen's University where he graduated in Mining Engineering in 1958. He continued his education at Osgoode

Hall Law School where he graduated with silver medal and honours in 1961.

Currently a partner in the Toronto law firm of Benson, McMurtry, Percival and Brown, Mr. Percival taught at Osgoode Hall Law School, assisted the Ontario Law Reform Commission in preparation of draft Occupiers Liability Act in 1972 and 1973 and is a former treasurer and director of the Advocates Society.

He is also a former trustee of the County of York Law Association, a member of the council of the Toronto Medical-Legal Society, a member of the Canadian Joint Council of the Canadian Bar Association and the Canadian Medical Association and a past president of the Lawrence Park Athletic Association.

Mr. Percival, who received his Queen's Counsel in 1975, was counsel for the Metro Toronto Police Department during the latter stages of the Morand Commission into Police Practices in Toronto and counsel for the Ontario Provincial Police during the Krever Commission Hearings into the Confidentiality of Health Records in 1979.

APPENDIX C

OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

Chairman	Derek Mendes da Costa, Q.C., LL.B., LL.M., S.J.D.
Vice Chairman	Honourable George A. Gale, C.C., Q.C., LL.D.
Commissioners	Honourable Richard A. Bell, P.C., Q.C. Honourable James C. McRuer, O.C., LL.D., D.C.L. William R. Poole, Q.C. Barry A. Percival, Q.C.
Counsel	M. Patricia Richardson, B.A., M.A., LL.B.
Secretary and Administrative Officer	Miss A. F. Chute
Legal Research Officers	M. A. Springman, B.A., M.A., M.Sc., LL.B. Eric Gertner, LL.B., B.C.L. (Oxon) Ann M. Merritt, B.A., LL.B. L. M. Fox, LL.B. Pamela M. Gibson, B.A., LL.B.
Administrative Assistant	Mrs. Roslynne F. Mains, B.A.
Secretary to Chairman	Mrs. Stephanie Hlynka
Secretary to Vice Chairman	Mrs. E. N. Page
Secretary to Counsel	Mrs. D. M. Halyburton
Secretary to Administrative Officer	Mrs. B. G. Woodley
Secretaries to Legal Research Officers	Ms. Grace C. Novakowski, B.A. Mrs. E. M. Renda
Receptionist	Miss Mary M. O'Hara

FOURTEENTH ANNUAL REPORT

1980-81

ONTARIO LAW REFORM COMMISSION

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General

FOURTEENTH ANNUAL REPORT

1980-81

ONTARIO LAW REFORM COMMISSION

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Ministry of the
Attorney
General

The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act* for the purpose of reforming the law, legal procedures and legal institutions. The Commissioners are:

DEREK MENDES DA COSTA, Q.C., LL.B., LL.M., S.J.D., LL.D., *Chairman*

HONOURABLE GEORGE A. GALE, C.C., Q.C., LL.D.

HONOURABLE RICHARD A. BELL, P.C., Q.C.

* HONOURABLE JAMES C. MCRUER, O.C., LL.D., D.C.L.

WILLIAM R. POOLE, Q.C.

BARRY A. PERCIVAL, Q.C.

M. Patricia Richardson, M.A., LL.B., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are located on the Sixteenth Floor at 18 King Street East, Toronto, Ontario, Canada M5C 1C5.

* The Honourable James C. McRuer, the first Chairman of the Commission and Vice Chairman until February, 1977, resigned as a full-time Member of the Commission effective June, 1977. However, Mr. McRuer agreed to remain a Commissioner in relation to the Projects on the Law of Trusts and the Enforcement of Judgment Debts, in the development of which he has been much involved.

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Ontario
Law Reform
Commission

To The Honourable R. Roy McMurtry, Q.C.
Attorney General for Ontario

Dear Mr. Attorney:

We have the honour to present the Fourteenth Annual Report of the Ontario Law Reform Commission, for the period April 1, 1980 to March 31, 1981.

INTRODUCTION

This Report deals with the activities of the Commission during the period April 1, 1980 to March 31, 1981. During the past year the Commission has been engaged in a heavy research programme.

We have completed much of the research involved in our Project on the Enforcement of Judgment Debts and Related Matters. The Commission decided that, due to the magnitude and the complexity of the subject, it was desirable to divide the Report into five Parts. We have now submitted Parts I, II and III of the Report, and have made substantial progress on Parts IV and V.

The Commission records the enactment of *The Occupiers' Liability Act, 1980*, S.O. 1980, c. 14, which in large measure adopts the recommendations made by the Commission in its *Report on Occupiers' Liability* (1972).

The past year has been productive and busy. During the year, much of the Commission's energy was devoted to the completion of the first three Parts of the *Report on the Enforcement of Judgment Debts and Related Matters*. We also have brought the Project on Class Actions close to conclusion. In addition, we have made progress on a Reference, Witnesses Before Committees of the Legislature.

The Commission's Programme consists of eleven Projects. As we said in our last Annual Report, much balance and co-ordination is involved in the task of bringing all Projects forward in an orderly manner. Since the submission of Parts I, II and III of the *Report on the Enforcement of Judgment Debts and Related Matters*, the Commission and its research staff have been committed to the completion of research and preparation of the *Report on Class Actions* and the *Report on Witnesses Before Committees of the Legislature*, commitments that will continue into the coming year. We have not been able to develop, in the past year, two Projects: Basic Principles of Land Law and Declarations of Status. We recognize the importance of these Projects, and will return to them when time and resources permit.

As in past years, the Commission has continued to receive helpful suggestions for additions to its Programme from members of the judiciary, the legal profession and the public. We welcome this interest in the work of the Commission, and wish to express our appreciation to all those who gave of their time to assist us in this way.

THE PROGRAMME: REFERRED MATTERS

Section 2(1)(d) of *The Ontario Law Reform Commission Act* requires the Commission to inquire into and to consider any matter relating to any subject referred to it by the Attorney General. One new matter, Witnesses Before Committees of the Legislature, was referred to the Commission during the period covered by this Report. During the year, research on a prior Reference, the Class Actions Project, continued.

(i) *Witnesses Before Committees of the Legislature*

On June 5, 1980, in response to a recommendation made by the Standing Procedural Affairs Committee of the Ontario Legislative Assembly in its *Report on Witnesses Before Committees*, the Attorney General referred the subject of witnesses before legislative committees to the Commission. The Attorney General requested the Commission to conduct a thorough review of the subject, bearing in mind particularly the eleven questions stated for the Commission in Appendix A to the *Report on Witnesses Before Committees*.

The *Report on Witnesses Before Committees* made it clear that both the law and practice in this area required clarification and rationalization. The Commission engaged Alistair Fraser, Esq., former Clerk of the House of Commons in Ottawa, to prepare a comprehensive internal research paper dealing with all aspects of the subject, including the following matters: the nature and functions of various types of legislative committees; the kinds of activities undertaken by committees; the power of committees to compel witnesses to appear and answer questions and produce documents at committee hearings; the power of the Legislative Assembly to punish witnesses who fail to appear and cooperate with committees; the obligations of witnesses to committees, and of committees to witnesses; the immunity or protection that extends or should extend to witnesses in respect of their oral testimony and written submissions; the protection of third parties whose names or activities are divulged or discussed at committee meetings; the nature and scope of the doctrine of Crown privilege in respect of oral testimony and the production of documents; the constitutional aspects of protecting witnesses from the use of their evidence in subsequent civil and criminal proceedings; and the right to counsel at committee meetings. The experience of legislative committees of the Parliament in Ottawa, as well as reports and relevant material from Australia and the United Kingdom, are discussed in the research paper. In addition, the Commission will review the operation of Congressional committees in the United States.

We have completed our deliberations in respect of most of the material and recommendations contained in the research paper. The Commission is engaged in the preparation of its Report, which it will submit to the Attorney General at the earliest opportunity.

(ii) Class Actions

The terms of reference, and the scope and history of the Class Actions Project, are outlined in detail in previous Annual Reports. During the past year, substantial progress was made on the Project. In particular, internal research papers dealing with the important and controversial issues of damages, discovery, opting in and opting out, notice and *res judicata* have been prepared and considered by the Commission. We will discuss the remaining research papers, dealing with settlement, costs and procedural problems, in the spring and early summer of this year. It is hoped that the Commission's final *Report on Class Actions*, and an accompanying draft *Class Actions Act*, will be submitted to the Attorney General by the fall.

THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

During the past year, no new Projects have been initiated by the Commission.

1. COMPLETED PROJECTS

Enforcement of Judgment Debts and Related Matters

As we have said, the Commission has submitted to the Attorney General Parts I, II and III of our projected five Part Report. The Commission's Project on the Enforcement of Judgment Debts and Related Matters is a response to administrative, substantive and procedural deficiencies in the present law and practice pertaining to debtor-creditor relations, and is an attempt to deal with these deficiencies comprehensively.

Part I of our Report begins with a consideration of the methods by which a financially overcommitted debtor, and particularly a judgment debtor, may pay his debts by instalments and thereby avoid the imposition of traditional enforcement measures against him. Chapter 2 deals with Part III of the proposed new federal bankruptcy legislation (Bill C-12, First Session, Thirty-second Parliament, 29 Eliz. II, 1980) and with provincial consolidation orders, instalment payment plans and stays of enforcement proceedings. While we generally endorse the provisions of Part III of Bill C-12, we do make recommendations that differ from some of these provisions. In addition, Chapter 2 offers several proposals in respect of provincial instalment payment plans and stays of enforcement proceedings that fall outside the ambit of Bill C-12.

With Chapter 3 of Part I of our Report, the Commission commences its study of the organizational and administrative aspects of enforcement. Chapter 3 recommends the creation of a new, integrated enforcement office for each county under the direction of a sheriff. We recommend that the new enforcement office should have overall responsibility for the enforcement of all money judgments, including support and maintenance orders,

from all courts, except “show cause” proceedings and expanded wage garnishment proceedings in the provincial court (family division). Moreover, under our proposals, the enforcement of money judgments against a debtor would emanate from a single enforcement office, thereby eliminating the existing fragmented enforcement system and ensuring the coordination and integration of all enforcement activities against that debtor.

In Chapter 4 of Part I, the Commission discusses the means by which a judgment creditor and the enforcement office may obtain information concerning a debtor’s property. Proposals are made in respect of judgment debtor questionnaires and examinations, third party examinations and public register searches.

In Part II of our Report, the Commission considers the traditional methods by which creditors may enforce their money judgments. Chapter 2 deals with the seizure and sale of personal property. Recommendations are made concerning, for example, the province-wide binding of a debtor’s personal property by the proposed new writ of enforcement — a writ, more comprehensive than the present writ of *fieri facias*, that would be employed to initiate any and all traditional enforcement measures against a debtor. Other recommendations attempt, by overturning the restrictive common law, to ensure that all of a debtor’s personal property is liable to seizure and sale, subject only to a meaningful set of exemptions designed to ensure that the debtor is left with the necessities of life. Yet further recommendations deal with specific problem areas relating, for example, to the seizure and sale of mortgages and other securities for money, negotiable instruments, shares, non-assignable or restrictively assignable interests, and the beneficial interest of a debtor under a personal property security agreement. Finally, Chapter 2 makes recommendations concerning the time, notice, location and manner of sale of seized personal property.

Chapter 3 of Part II deals with the garnishment of a debtor’s income and other debts owing to the debtor. As in the case of execution against personal property, recommendations are made to ensure that all debts owing to a debtor, including conditional, contingent and future debts, are subject to garnishment. The Commission also recommends that a judgment creditor should be entitled to a continuing garnishment order, that is, a garnishment order that remains effective until the amount specified in the order has been paid. In this way, the frustrating need to obtain a separate order each time wages, or a debt, are sought to be garnished would be obviated. In addition to extending the garnishment remedy, the Commission has been cognizant of the need to protect debtors’ incomes. Accordingly, proposals are made for an expanded income exemption, beyond that now contained in *The Wages Act*. Finally, Chapter 3 makes recommendations designed to establish one uniform garnishment procedure for the enforcement of money judgments from all courts. Under our

proposals, for example, it would no longer be necessary to apply to a court for a garnishment order; rather, the new enforcement office, generally, would have carriage of garnishment proceedings.

Chapter 4 of Part II deals with equitable execution, charging orders and stop orders. Essentially, it is proposed that the hitherto restrictive equitable execution remedy should be abolished and that the remedy of receivership should take its place. Under our proposals, the latter remedy would be fully integrated into the new enforcement regime as but another type of enforcement remedy to be employed by judgment creditors. Receivers would be permitted to sell property received by them and, in appropriate circumstances, they would be permitted to manage a debtor's property or commercial enterprise. With respect to charging orders, the Commission recommends the abolition of this remedy as redundant. Finally, recommendations are made to expand the stop order remedy to cover all property in court.

Chapter 5, the last Chapter in Part II, deals with the resolution of disputes in enforcement proceedings. There is a consideration of the gaps and deficiencies in the interpleader rules of the Supreme Court of Ontario Rules of Practice, and proposals are made to render the interpleader rules more comprehensive. The Commission's most significant recommendations concern claims made by third parties to seized personal property. It is recommended, for example, that subsequent to a seizure, the sheriff should serve a "notice of seized property" on all persons who, to the knowledge or reasonable belief of the sheriff, may have some right, title or interest in the seized property. Generally speaking, the failure of a third party to make a claim to seized property within the prescribed limitation period would result in the extinguishment of that claim upon a sale of the property to a purchaser at an execution sale. However, provision is made for the filing of late claims and claims against the proceeds of sold property. Finally, recommendations are made in respect of the resolution of disputes in the context of garnishment proceedings — recommendations that basically mirror those made in the context of enforcement against personal property.

Part III of our Report concerns the very important topic of enforcement against interests in land. Part III is divided into two major portions: Chapter 2 deals with certain substantive and procedural considerations pertaining to enforcement, and Chapter 3 canvasses the relationship between enforcement against land and the process by which land is sold or mortgaged. Under our proposals in Chapter 2, most of the existing restrictions on enforcement against land would be abolished. Although the mandatory delay period prior to a sale is retained, it would be reduced from twelve months to six months. Creditors would be given rights to make a claim against a surviving joint tenant where the debtor joint tenant has died leaving insufficient property to satisfy his judgment debts.

Special provisions are proposed in respect of a debtor's residence, including exemption provisions and provisions protecting the interests of creditors where a debtor's residence is classified in law as personal property and not land. Finally, recommendations respecting the rights of creditors of titled and non-titled spouses are made where the debtor's residence is a "matrimonial home" under *The Family Law Reform Act, 1978*.

In Chapter 3, we consider one of the most frustrating and vexing areas of debtor-creditor law. After describing the manner by which enforcement law impinges on conveyancing law and practice, and after considering how the present enforcement regime serves to prejudice persons involved in the conveyancing process who are strangers to the debtor-creditor relationship, the Commission offers several long term and short term proposals for reform. Believing that the evils inherent in the present system stem from the operation of a writ of *fieri facias* as a general lien, binding a debtor's land without being registered directly against the title, the Commission, in its long term proposals, recommends the abolition of the writ as a general lien. In its stead, we propose that a creditor should be required to register his writ directly against the title to his debtor's land in order to bind that land. As a means by which creditors could discover land owned by their debtors, the Commission recommends the creation of an index of landholdings comprising all *Registry Act* and *Land Titles Act* land in Ontario.

In the second portion of Chapter 3, the Commission addresses itself to several short term proposals that could be adopted pending the implementation of its long term proposals. It is recommended, for example, that writs, operating as general liens, should not bind land until the expiry of ten calendar days after filing. This delay in the binding effect of a writ would preclude the need for a subsearch for writs immediately prior to the closing of a real estate transaction; consequently there would be ten days within which to resolve "similar name" problems stemming from the discovery of a writ against a debtor with an identical or similar name to that of the vendor or mortgagor. In order to protect creditors, the Commission further recommends that creditors who know of land owned by their debtors should be entitled to register their writs directly against the title, with the land being bound immediately upon registration.

Other short term proposals are made in Chapter 3 in an attempt to alleviate the "similar name" problem. For example, it is recommended that a writ should bind land only where the surname and at least one full given name on the writ are identical with the surname and one full given name on a document registered against the title to the land in question. Sheriffs would be required to report the existence of a writ only where the surname and at least one full given name on the writ are identical with the surname and one full given name on the request form delivered to the sheriff. Finally, in order to preclude the necessity for repeated historical searches for outstanding writs binding *Registry Act* land, with the attendant "similar name" problems, it is recommended that when land is conveyed a sheriff's

execution certificate should be registered on title and that all persons seeking to acquire any interest in the land should be entitled to rely on the representations made in the registered certificate.

2. PROJECTS IN PROCESS

(i) *The Law of Trusts*

The preparation of the *Report on the Law of Trusts* and an Act to revise *The Trustee Act* has entered the final stages. Approximately one-half of the Report and the proposed revised *Trustee Act* has been approved by the Commission. We wish to acknowledge the assistance of Professor D.W.M. Waters of the Faculty of Law, University of Victoria, the Project Director, for whose scholarship and devotion, both in time and in energy, we are most grateful. So too, we have had the benefit of the great skill and long experience of L.R. MacTavish, Esq., Q.C., former Senior Legislative Counsel, in the preparation of the proposed revised Act. Although completion of the Report has been temporarily suspended, pending the conclusion of the *Report on Class Actions*, it is anticipated that work will resume in the fall, and that the Report and revised *Trustee Act* will be forwarded to the Attorney General before the end of the coming year.

(ii) *Administration of Estates of Deceased Persons*

The basic research involved in this Project has been all but completed, and the Commission has considered the first Research Report, prepared by the Project Director, Professor George W. Alexandrowicz, of the Faculty of Law, Queen's University. The Advisory Committee of experts in the law governing estate administration, constituted under the chairmanship of Malcolm S. Archibald, Esq., Q.C., has met frequently, and has submitted many matters for consideration by the Commission. It is hoped that work will commence, during the coming year, on a proposed new *Administration of Estates Act*, which will bring together, in a revised and expanded form, relevant portions of *The Trustee Act*, *The Devolution of Estates Act*, and the provisions governing practice under *The Surrogate Courts Act* and Rules. A number of common law doctrines that now govern estate administration will be codified and revised in the proposed new Act.

(iii) *The Hague Convention Concerning the International Administration of the Estates of Deceased Persons*

The question as to whether the Hague Convention should be given effect in Ontario has been considered by the Commission. In relation to the administration of estates of foreign decedents, it is obvious that the Project is closely linked to our Project on the Administration of Estates of Deceased Persons. For this reason, the two Projects are being considered together. In due course we will decide whether to combine the Projects in one Report, or to submit two Reports.

(iv) The Law of Mortgages

With the appointment, during the last year, of Professor Richard H. McLaren, of the Faculty of Law, University of Western Ontario, as Project Director, research has commenced. A summary of mortgage remedies has been prepared, but has not yet been considered by the Commission.

(v) Enforcement of Judgment Debts and Related Matters

Of the Commission's projected five *Part Report on the Enforcement of Judgment Debts and Related Matters*, two Parts remain to be completed. Part IV will consider prejudgment enforcement remedies and voidable transactions, and Part V of the Report will contain a review of creditors' relief legislation, including Crown priorities and the distribution to creditors of the proceeds of a sale of a debtor's property. Research on these topics has been completed. Part V also will consider the liability of the sheriff for acts or omissions in the course of his enforcement duties, and other miscellaneous matters pertaining to the enforcement of money judgments. As has been the case throughout this Project, we are very pleased to state that we will continue to have the benefit of the assistance of David E. Baird, Esq., Q.C.

(vi) The Law of Standing

The objective of the Project on the Law of Standing is to determine whether private individuals who wish to litigate in the public interest should be granted increased access to the courts. The law governing *locus standi*, or status to bring suit, has been frequently criticized, particularly as it relates to the right of a private individual to commence litigation concerning public rights. Generally speaking, the existing law restricts the right to litigate in the public interest to the Attorney General, either in his own name or by means of a relator action. In order to be granted standing, a private individual must establish that he or she has a special interest or has sustained special damages.

During the initial stages of the Project, the internal legal staff prepared a background paper dealing with the present law and isolating reform issues. While priority has been accorded to the Minister's Reference on Class Actions, the Commission has commissioned a major research paper dealing with reform of the law of standing. It is anticipated that this paper will be received by the Commission soon and that, following completion of the References on Class Actions and Witnesses Before Committees of the Legislature, the Commission will consider the issues raised in the research paper.

(vii) Powers of Entry

Excellent progress has been made on this Project during the past year. The Project Directors, Professor Alan Grant, of Osgoode Hall Law School,

York University, and Professor Stanley M. Makuch, of the Faculty of Law, University of Toronto, have completed their research, and the Commission has considered a draft Report concerning powers conferred by Ontario statutes and regulations to enter upon lands, buildings and private dwellings. The Commission is now engaged in the preparation of a proposed *Powers of Entry Act*, which will be appended to the Commission's Report. Depending upon the availability of time and resources, the Commission hopes to submit its Report in the coming year.

(viii) Law of Contract Amendment

Our last Annual Report contained details of the content of this Project. Briefly stated, the Project is divided into three Phases, Phase I being concerned with the formational aspects of the law of contract, and the remaining two Phases with substantive and remedial issues. In the past year, the progress of this Project has been most satisfactory. An Advisory Group of experts, consisting of members of the judiciary and practising lawyers, under the chairmanship of James M. Spence, Esq., has been established, and the Commission has benefited greatly from its views and comments. A research report dealing with Phase I, prepared by the joint Project Directors, Professor Jacob S. Ziegel and Professor Stephen M. Waddams, both of the Faculty of Law, University of Toronto, has been considered by the Commission, and research on Phase II is well under way. It is likely that the Commission will issue separate Reports covering each Phase of the Project. In the coming year, should time permit, the Commission will commence the preparation of a draft Report on Phase I, and the consideration of the topics covered in Phase II.

(ix) Contribution Among Wrongdoers

The purpose of this Project is to review the law relating to the allocation of loss between two or more persons who are responsible for the same injuries, and the law relating to contributory negligence. Professor John M. Evans, of Osgoode Hall Law School, York University, has been appointed Project Director, and the Commission has considered many difficult and complex issues, including: aspects of joint and several liability; extension of the right to contribution to all concurrent wrongdoers; elements of the right to contribution; the effect of a settlement upon the right to contribution; and defences to the right to contribution. The remaining research should be completed in the coming year.

FUTURE PROGRAMME

In recent years, the Commission has been required to formulate priorities and to allocate limited resources among the Projects that constitute our research Programme. Last year was no exception, and it is clear that the issue will be with us again in the coming year. As we have said,

several of our Projects have been brought to, or near to, the stage when a draft Report can be prepared. However, the preparation of the *Report on Class Actions* and the *Report on Witnesses Before Committees of the Legislature* will dominate the attention of the Commission in the near future.

GENERAL ACTIVITIES

The Chairman and Counsel, on behalf of the Commission, attended a meeting of the Canadian Law Reform Agencies at Charlottetown in August, 1980. This meeting provided an opportunity to exchange information with representatives of the other law reform agencies across Canada, and to be informed of the research programmes of these agencies. Immediately following the meeting, the Chairman represented the Commission at the Sixty-second Annual Meeting of the Uniform Law Conference of Canada, in the same city.

In our last Annual Report, we stated that the Uniform Law Section of the Uniform Law Conference of Canada had established a Committee on the Sale of Goods to consider the need for uniform sale of goods legislation, and to assess the utility of the Ontario Law Reform Commission's *Report on Sale of Goods* as a basis for such a uniform law. Our Chairman was appointed Chairman of this Committee, which, during the past year, met on six occasions in Toronto. The Committee has made great progress, and expects that its Report will be completed by the summer of 1981.

In the year under review, the Commission has been pleased to renew its collaboration with the Law Reform Committee of the Ontario Branch of the Canadian Bar Association. On May 22, 1980, the Chairman, Vice Chairman and Counsel met with the Committee, under the chairmanship of Mrs. Judith M. Oyen, Q.C., and with Julian H. Huffer, Esq., C.A.E., Executive Director of the Ontario Branch of the Canadian Bar Association, to discuss methods of future liaison between the Commission and the Committee. The Commission wishes to express its gratitude to the Committee for the help and cooperation that was so willingly offered. We will take full advantage of this offer, and are in touch with the Committee concerning the establishment of an Advisory Committee to the Project on the Law of Mortgages.

During the past year, the Chairman was called upon to represent the Commission on many occasions. These included an address to the Metropolitan Toronto Legal Secretaries Association of Canada, and an address to the Family Law II Conference on the Matrimonial Property Act, sponsored by the Continuing Legal Education Society of Nova Scotia. The Chairman also visited the Law School of McGill University to speak to first

year students on law reform in Ontario, and spoke to students at the Forest Hill Collegiate Institute.

As part of the March Special Lecture Series 1981, of the Department of Continuing Education of the Law Society of Upper Canada, the Chairman delivered a paper entitled "The Enforcement of Judgments: Proposals for Reform", that had been prepared by the Chairman and by Eric Gertner, Esq., one of the Legal Research Officers of the Commission.

VISITORS

As in the past, the Commission has endeavoured to maintain a mutually beneficial working relationship with other law reform agencies. It is always a great pleasure to welcome to our offices representatives of these agencies, and to hear of trends and developments in their jurisdictions. The visitors whom we were pleased to receive, included: Bruce M. DeBelle, Esq., Commissioner, The Law Reform Commission, Australia; Dr. P.M. North, Commissioner, The Law Commission, England; and Denis Gressier, Esq., Commissioner, Law Reform Commission, New South Wales.

Other visitors whom we were privileged to welcome included: The Honourable Mr. Justice R.S. Watson, Senior Judge, Family Court of Australia; and, Mrs. Gloria Cumper, a distinguished member of the legal profession of Jamaica.

TABLE OF IMPLEMENTATION

Attached to this Report as Appendix A is a list of the Reports that have been prepared and submitted by the Commission since its inception in 1964, together with a table setting out the extent to which legislation concerning our proposals has been enacted.

ACKNOWLEDGMENTS

Appendix B consists of a list of the officers and permanent staff of the Commission. As will be noted, the past year has seen no change in the ranks of the Commissioners or the legal staff. However, we regret the loss of several members of our administrative staff, to whom we extend our best wishes for success in their new endeavours: Mrs. Roslynne F. Mains, B.A., Ms. Grace C. Novakowski, B.A., and Mrs. E.M. Renda. We warmly welcome those who have joined our administrative staff during the past year: Mrs. J.A. Brown, B.A., Mrs. Toni Farrace, and Ms. Victoria Van Asperen, B.Sc.

Our sincere thanks are also extended to the Secretary, Miss A.F. Chute, and to the administrative staff for all they have done to assist the Commission during the year.

To you, Mr. Attorney, and to the officers of the Ministry, we extend our sincere appreciation and thanks for the manner in which we have been sustained and encouraged in our work.

All of which is respectfully submitted.



Derek Mendes da Costa,
Chairman



George A. Gale
Vice Chairman



Richard A. Bell
Commissioner



James C. McRuer
Commissioner



William R. Poole
Commissioner



Barry A. Percival
Commissioner

March 31, 1981

APPENDIX A

REPORTS MADE BY THE ONTARIO LAW REFORM COMMISSION

	Title	Date of Report	Legislation Concerning Commission Proposals
1.	No. 1 The Rule Against Perpetuities	February 1, 1965	<i>The Perpetuities Act</i> , S.O. 1966, c. 113
2.	No. 1A Supplementary Report on the Rule Against Perpetuities	March 1, 1966	<i>do.</i>
3.	No. 2 The Wages Act; Assignment of Wages	March 3, 1965	<i>The Wages Amendment Act</i> , S.O. 1968, c. 142
4.	No. 3 Personal Property Security Legislation	May 28, 1965	<i>The Personal Property Security Act</i> , S.O. 1967, c. 72
5.	No. 3A Supplementary Report on Personal Property Security Legislation	May 18, 1966	<i>do.</i>
6.	The Evidence Act; Admissibility of Business Records	February 16, 1966	<i>The Evidence Amendment Act</i> , S.O. 1966, c. 51, s. 1
7.	The Mechanics' Lien Act	February 22, 1966	<i>The Mechanics' Lien Act</i> , S.O. 1968-69, c. 65
8.	Supplementary Report on The Mechanics' Lien Act	May 26, 1967	<i>do.</i>
9.	Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	See <i>The Mechanics' Lien Amendment Act</i> , S.O. 1975, c. 43 <i>The Ministry of Transportation and Communications Creditors Payment Act</i> , S.O. 1975, c. 44 <i>The Public Works Creditors Payment Repeal Act</i> , S.O. 1975, c. 45
10.	The Execution Act: Exemption of Goods from Seizure	December 9, 1966	<i>The Execution Amendment Act</i> , S.O. 1967, c. 26

	Title	Date of Report	Legislation Concerning Commission Proposals
11.	The Law of Condominium	March 6, 1967	<i>The Condominium Act</i> , S.O. 1967, c. 13 See now <i>The Condominium Act</i> , S.O. 1978, c. 84
12.	Basis for Compensation on Expropriation	September 21, 1967	<i>The Expropriations Act</i> , S.O. 1968-69, c. 36
13.	The Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	<i>The Sandwich, Windsor and Amherstburg Railway Amendment Act</i> , S.O. 1968, c. 120
14.	Annual Report 1967	January 15, 1968	—
15.	Certain Aspects of the Proposed Divorce Legislation contained in Bill C-187 (Can.)	January 19, 1968	<i>Divorce Act</i> , S.C. 1967-68, c. 24, s. 26
16.	The Proposed Adoption in Ontario of The Uniform Wills Act	February 5, 1968	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 See <i>The Registry Amendment Act</i> , S.O. 1978, c. 8, s. 1
17.	The Protection of Privacy in Ontario	September 10, 1968	See <i>The Consumer Reporting Act</i> , S.O. 1973, c. 97
18.	The Insurance Act, R.S.O. 1960, c. 190, s. 183, as amended by S.O. 1961-62, c. 63, s. 4 (commutation)	October 3, 1968	—
19.	Trade Sale of New Houses and the Doctrine of Caveat Emptor	October 4, 1968	See <i>The Ontario New Home Warranties Plan Act</i> , S.O. 1976, c. 52
20.	Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	<i>The Landlord and Tenant Amendment Act</i> , S.O. 1968-69, c. 58

	Title	Date of Report	Legislation Concerning Commission Proposals
21.	Limitation of Actions	February 3, 1969	See <i>The Highway Traffic Amendment Act (No. 2)</i> , S.O. 1975, c. 37 <i>The Fatal Accidents Amendment Act</i> , S.O. 1975, c. 38 See now <i>The Family Law Reform Act</i> , S.O. 1978, c. 2, s. 60(4) <i>The Trustee Amendment Act</i> , S.O. 1975, c. 39
22.	Annual Report 1968	April 7, 1969	—
23.	The Age of Majority and Related Matters	June 3, 1969	<i>The Age of Majority and Accountability Act</i> , S.O. 1971, c. 98
24.	Status of Adopted Children	June 3, 1969	<i>The Child Welfare Amendment Act</i> , S.O. 1970, c. 96, s. 23 See now <i>The Child Welfare Act</i> , S.O. 1978, c. 85
25.	Report on Family Law: Part I — Torts	November 4, 1969	<i>The Family Law Reform Act</i> , S.O. 1978, c. 2 (partial implementation)
26.	Report on Section 20 of The Mortgages Act	March 12, 1970	<i>The Mortgages Amendment Act</i> , S.O. 1970, c. 54, s. 1
27.	Report on Family Law: Part II — Marriage	April 6, 1970	<i>The Civil Rights Statute Law Amendment Act</i> , S.O. 1971, c. 50, s. 55 (partial implementation) See now <i>The Marriage Act</i> , S.O. 1977, c. 42 (partial implementation)
28.	Annual Report 1969	April 20, 1970	—
29.	Report on Actions Against Representatives of Deceased Persons	November 30, 1970	<i>The Trustee Amendment Act</i> , S.O. 1971, c. 32, s. 2

	Title	Date of Report	Legislation Concerning Commission Proposals
30.	The Coroner System in Ontario	January 25, 1971	<i>The Coroners Act</i> , S.O. 1972, c. 98 See <i>The Coroners Amendment Act</i> , S.O. 1978, c. 38
31.	Sunday Observance Legislation	February 26, 1971	<i>The Retail Business Holidays Act</i> , S.O. 1975 (2nd Session), c. 9
32.	Land Registration	March 23, 1971	See <i>The Corporations Tax Amendment Act (No. 2)</i> , S.O. 1979, c. 89
33.	Annual Report 1970	March 31, 1971	—
34.	The Change of Name Act	May 31, 1971	<i>The Change of Name Amendment Act</i> S.O. 1972, c. 44 See <i>The Change of Name Amendment Act</i> , S.O. 1978, c. 28
35.	Section 16, The Mortgages Act	June 18, 1971	—
36.	Development Control	September 28, 1971	<i>The Planning Amendment Act</i> , S.O. 1973 c. 168, s. 10 See now <i>The Planning Amendment Act</i> , S.O. 1979, c. 59
37.	Powers of Attorney	January 11, 1972	<i>The Powers of Attorney Act</i> , S.O. 1979, c. 107
38.	Occupiers' Liability	January 11, 1972	<i>The Occupiers' Liability Act</i> , S.O. 1980, c. 14
39.	Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
40.	Review of Part IV of The Landlord and Tenant Act	March 31, 1972	<i>The Landlord and Tenant Amendment Act</i> , S.O. 1972, c. 123
41.	Annual Report 1971	March 31, 1972	—
42.	The Non-Possessory Repairman's Lien	October 4, 1972	—

	Title	Date of Report	Legislation Concerning Commission Proposals
43.	Administration of Ontario Courts, Part I	February 26, 1973	See <i>The Administration of Courts Project Act</i> , S.O. 1975, c. 31 <i>The Judicature Amendment Act (No. 2)</i> , S.O. 1977, c. 51, s. 9
44.	Annual Report 1972	March 31, 1973	—
45.	Administration of Ontario Courts, Part II	May 23, 1973	See <i>The Administration of Courts Project Act</i> , S.O. 1975, c. 31
46.	Report on Family Law: Part III—Children	September 25, 1973	<i>The Child Welfare Amendment Act</i> , S.O. 1975, c. 1 (partial implementation) See now <i>The Child Welfare Act</i> , S.O. 1978, c. 85 <i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 (partial implementation) <i>The Children's Law Reform Act</i> , S.O. 1977, c. 41 (partial implementation)
47.	Report on The Solicitors Act	September 28, 1973	—
48.	Report on Motor Vehicle Accident Compensation	November 6, 1973	—
49.	Administration of Ontario Courts, Part III	December 17, 1973	<i>The Judicature Amendment Act</i> , S.O. 1975, c. 30 (partial implementation) See <i>The Administration of Courts Project Act</i> , S.O. 1975, c. 31 <i>The Small Claims Courts Amendment Act</i> , S.O. 1977, c. 52 (partial implementation)

	Title	Date of Report	Legislation Concerning Commission Proposals
50.	Report on Family Law: Part IV — Family Property Law	February 8, 1974	<p><i>The Succession Law Reform Act</i>, S.O. 1977, c. 40 (partial implementation)</p> <p><i>The Family Law Reform Act</i>, S.O. 1978, c. 2 (partial implementation)</p> <p>See <i>The Land Titles Amendment Act</i>, S.O. 1978, c. 7</p> <p><i>The Registry Amendment Act</i>, S.O. 1978, c. 8</p>
51.	Report on Family Law: Part V—Family Courts	February 8, 1974	<p>See <i>The Unified Family Court Act</i>, S.O. 1976, c. 85</p> <p><i>The Unified Family Court Amendment Act</i>, S.O. 1978, c. 68</p> <p><i>The Children's Probation Act</i>, S.O. 1978, c. 41 (partial implementation)</p>
52.	Annual Report 1973	May 6, 1974	—
53.	International Convention Providing a Uniform Law on the Form of the International Will	July 3, 1974	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40, s. 42
54.	Annual Report 1974	March 31, 1975	—
55.	Report on Family Law: Part VI — Support Obligations	April 18, 1975	<p><i>The Succession Law Reform Act</i>, S.O. 1977, c. 40 (partial implementation)</p> <p><i>The Family Law Reform Act</i>, S.O. 1978, c. 2</p>

	Title	Date of Report	Legislation Concerning Commission Proposals
56.	Mortmain, Charitable Uses and Religious Institutions	February 27, 1976	<i>The Religious Organizations' Lands Act</i> , S.O. 1979, c. 45 <i>The Anglican Church of Canada Act</i> , S.O. 1979, c. 46 <i>The Registry Amendment Act</i> , S.O. 1979, c. 94, s. 17
57.	Landlord and Tenant Law	March 15, 1976	—
58.	The Law of Evidence	March 29, 1976	—
59.	Annual Report 1975	March 31, 1976	—
60.	Report on Changes of Name	August 16, 1976	<i>The Vital Statistics Amendment Act</i> , S.O. 1978, c. 81, s. 1 (partial implementation)
61.	Report on The Impact of Divorce on Existing Wills	February 28, 1977	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40, s. 17(2)
62.	Annual Report 1976	March 31, 1977	—
63.	Annual Report 1977	March 31, 1978	—
64.	Report on Sale of Goods	March 30, 1979	—
65.	Annual Report 1978	March 30, 1979	—
66.	Report on Products Liability	November 16, 1979	—
67.	Annual Report 1979	March 31, 1980	—
68.	Report on the Enforcement of Judgment Debts and Related Matters, Part I	February 20, 1981	—
69.	Report on the Enforcement of Judgment Debts and Related Matters, Part II	March 31, 1981	—
70.	Report on the Enforcement of Judgment Debts and Related Matters, Part III	March 31, 1981	—

Many of the Commission's earlier Reports are no longer in print. Those that are still in print may be ordered from Publications Services, Ministry of Government Services, 5th Floor, 880 Bay Street, Toronto, Ontario, Canada, M7A 1N8.

APPENDIX B

OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

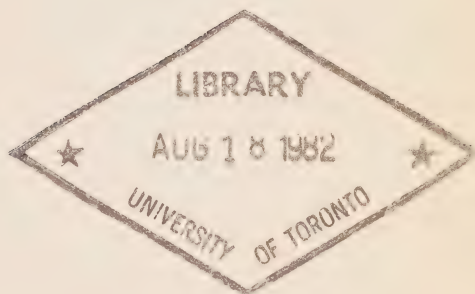
Chairman	Derek Mendes da Costa, Q.C., LL.B., LL.M., S.J.D., LL.D.
Vice Chairman	Honourable George A. Gale, C.C., Q.C., LL.D.
Commissioners	Honourable Richard A. Bell, P.C., Q.C. Honourable James C. McRuer, O.C., LL.D., D.C.L. William R. Poole, Q.C. Barry A. Percival, Q.C.
Counsel	M. Patricia Richardson, B.A., M.A., LL.B.
Secretary and Administrative Officer	Miss A. F. Chute
Legal Research Officers	M. A. Springman, B.A., M.A., M.Sc., LL.B. Eric Gertner, LL.B., B.C.L. (Oxon) Ann M. Merritt, B.A., LL.B. L. M. Fox, LL.B. Pamela M. Gibson, B.A., LL.B.
Administrative Assistant	Mrs. J. A. Brown, B.A.
Secretary to Chairman	Mrs. Stephanie Hlynka
Secretary to Vice Chairman	Mrs. E. N. Page
Secretary to Counsel	Mrs. D. M. Halyburton
Secretary to Administrative Officer	Mrs. B. G. Woodley
Secretaries to Legal Research Officers	Mrs. Toni Farrace Ms. Victoria Van Asperen, B.Sc.
Receptionist	Miss Mary M. O'Hara

FIFTEENTH ANNUAL REPORT

1981-82

ONTARIO LAW REFORM COMMISSION

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Ministry of the
Attorney
General

FIFTEENTH ANNUAL REPORT

1981-82

ONTARIO LAW REFORM COMMISSION



Ontario

**Ministry of the
Attorney
General**

The Ontario Law Reform Commission was established by section 1 of the *Ontario Law Reform Commission Act*. Section 2(1) of the Act states that it is the function of the Commission to inquire into and consider any matter relating to (a) reform of the law having regard to the statute law, the common law and judicial decisions; (b) the administration of justice; (c) judicial and quasi-judicial procedures under any Act; and (d) any subject referred to it by the Attorney General. The Commissioners are:

DEREK MENDES DA COSTA, Q.C., LL.B., LL.M., S.J.D., LL.D., *Chairman*

H. ALLAN LEAL, Q.C., LL.M., LL.D., *Vice Chairman*

HONOURABLE RICHARD A. BELL, P.C., Q.C.

* HONOURABLE JAMES C. MCRUER, O.C., LL.D., D.C.L.

WILLIAM R. POOLE, Q.C.

BARRY A. PERCIVAL, Q.C.

M. Patricia Richardson, M.A., LL.B., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are located on the Fifteenth Floor at 18 King Street East, Toronto, Ontario, Canada M5C 1C5.

* The Honourable James C. McRuer, the first Chairman of the Commission and Vice Chairman until February, 1977, resigned as a full-time Member of the Commission effective June, 1977. However, Mr. McRuer agreed to remain a Commissioner in relation to the Projects on the Law of Trusts and the Enforcement of Judgment Debts, in the development of which he has been much involved.

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Ontario
Law Reform
Commission

To The Honourable R. Roy McMurtry, Q.C.
Attorney General for Ontario

Dear Mr. Attorney:

We have the honour to present the Fifteenth Annual Report of the Ontario Law Reform Commission, for the period April 1, 1981, to March 31, 1982.

INTRODUCTION

This Report is concerned with the activities of the Commission during the period April 1, 1981, to March 31, 1982. During the year, the Commission's energies were devoted primarily to the completion of two References, dealing with Class Actions and Witnesses Before Committees of the Legislature. We are pleased to record that Reports on these topics have been submitted to the Minister.

The importance attached by the Commission to completing the two References made it necessary to suspend work temporarily on a number of Reports. Nevertheless, substantial progress was made on our Projects on Administration of Estates of Deceased Persons, Contribution Among Wrongdoers, Powers of Entry, and the Law of Mortgages. In addition, the Commission undertook a new Project on Remedies for Wrongful Intentional Interference with Goods.

The past year has seen a change in the membership of the Commission. The Honourable George Alexander Gale, C.C., Q.C., LL.D., resigned as Vice Chairman of the Commission for reasons of ill health. He was succeeded by H. Allan Leal, Q.C., LL.M., LL.D., recently Deputy Attorney General for Ontario, and formerly Chairman of the Ontario Law Reform Commission.

THE PROGRAMME: REFERRED MATTERS

Section 2(1)(d) of the *Ontario Law Reform Commission Act* requires the Commission to inquire into and to consider any matter relating to any subject referred to it by the Attorney General. No new matters were referred to the Commission during the period covered in this Report. Work on two prior References, the Class Actions Project and the Project on Witnesses Before Committees of the Legislature, was completed during the year.

COMPLETED PROJECTS

(i) *Witnesses Before Committees of the Legislature*

On September 11, 1981, the Commission submitted to the Attorney General its *Report on Witnesses Before Legislative Committees*. The Attorney General had referred the subject to the Commission in response to an earlier recommendation by the Standing Procedural Affairs Committee of the Ontario Legislative Assembly in its *Report on Witnesses Before Committees*. In Appendix A to the latter Report, the Standing Procedural Affairs Committee posed eleven questions for the Ontario Law Reform Commission. The Commission's Report deals not only with these

questions, but also with other important issues relating to the nature and powers of legislative committees, the rights, privileges, and protection afforded to committee witnesses, and the form, method of review, and amendment of the *Legislative Assembly Act*.

After first reviewing the establishment and functions of legislative committees, the Commission's Report turns to the powers of such committees. The Report deals with the question whether witnesses have different rights and obligations depending solely upon the circumstances of their appearance before a committee — that is, whether they appear voluntarily, at a committee's request, or by Speaker's warrant — and whether ministers of the Crown, civil servants, and public servants are in a different position than private citizens *vis-à-vis* legislative committees. The Commission concludes that, as a matter of law, all witnesses have the same rights and obligations and are equally subject to the applicable provisions of the *Legislative Assembly Act*, although there is a recognition that practical differences do exist between classes of witness.

With respect to the status of Ministers of the Crown, civil servants, and public servants appearing before legislative committees, the Commission recommends no change in the law and practice relating to the invocation of the doctrine of Crown privilege and the method by which a committee and the Legislative Assembly are entitled to deal with an assertion of the doctrine. Accordingly, the Commission does not recommend the adoption of legislation treating an assertion of Crown privilege by such witnesses as conclusive, or permitting a court or a special committee of the Legislative Assembly to consider claims of Crown privilege asserted before a legislative committee.

The bulk of the *Report on Witnesses Before Legislative Committees* concerns the power of legislative committees to call witnesses and to compel answers to questions and production of documents, and with the rights, privileges, and protection afforded to such witnesses and to third parties who might be affected by the testimony sought. Recommendations are made concerning the taking of oaths and affirmations, offences under the *Legislative Assembly Act*, sanctions against persons found to be in contempt, and the obtaining of a Speaker's warrant requiring attendance of a witness before a committee. For example, in order to give the Legislative Assembly more flexibility, the Commission recommends that, in addition to any other type of punishment for contempt, the Assembly should be empowered to impose a fine and to vary, suspend, or cancel any order under which a witness has been punished. With respect to a Speaker's warrant, it is recommended that a committee should be expressly permitted to approach the Speaker directly, without first obtaining the Assembly's order. The committee would be entitled to appeal to the Assembly against the Speaker's refusal to accede to the committee's request and, where the Speaker wishes directions, he would be entitled to seek an order from the

Assembly. Finally, to alert the Assembly to his activities, the Speaker would be required to notify the Assembly of his issuance of a warrant at the first available opportunity.

The Commission examines in some detail the position of committee witnesses. It expresses the view that witnesses should be informed of the duties and privileges attendant upon their appearance before a legislative committee, and of the penalties for refusing to appear before, or cooperate with, a committee. The Commission recommends the use of an explanatory brochure, to be sent to prospective witnesses in advance of their appearance. The brochure would describe committee procedures, outline the powers of the committee, and inform the witness of his rights and duties. Prior notice of the hearing, and of the nature of the evidence sought, is also recommended.

To ensure that a witness's rights are protected during the course of a committee hearing, the Commission also recommends that witnesses be given the right to retain counsel. Where a witness's rights or reputation are or may be in jeopardy, counsel would be entitled to examine and cross-examine witnesses and to make submissions.

As a further protection of the rights of witnesses, and as a general policy, the Commission is of the view that open committee sessions should be encouraged. *In camera* sessions should be permitted, however, where the evidence given might, for example, tend to incriminate the witness, reflect prejudicially on the reputation or conduct of the witness or another person, or involve sensitive, privileged, confidential, or classified matters. Where committee proceedings concern a matter that is *sub judice*, the Commission recommends that, unless the Assembly decides otherwise, the proceedings should be closed, with no publication of the evidence given until the court proceedings have been concluded. Other proposals respecting the publication or non-publication of evidence are also made, with a view to fairness to individuals and the public interest.

Finally, the Commission makes several recommendations concerning the use of a witness's evidence against him at a subsequent proceeding, having regard, for example, to the inherent privileges of legislatures, whether a witness is afforded any protection by existing federal and provincial legislation, and the anticipated impact of section 13 of the *Canadian Charter of Rights and Freedoms*. The Commission notes that, at common law, a committee witness could not refuse to answer any question on the ground that his answer might tend to incriminate him, and, after expressing the view that the Province is likely competent to enact appropriate legislation in this regard, recommends legislation providing, *inter alia*, that: (1) a witness who gives evidence at any legislative committee proceedings has the right not to have any evidence so given used against him in any subsequent proceeding, except in a prosecution for perjury or for the

giving of contradictory evidence; (2) this protection applies automatically to all witnesses, whether or not they claim or request the protection; and (3) the Legislative Assembly has no jurisdiction to withdraw the proposed protection and therefore to permit a witness's evidence to be used at any subsequent proceeding. To avoid constitutional challenges to the jurisdiction of the Province to legislate in respect of the use of committee evidence at subsequent criminal proceedings, the Commission recommends that the Parliament of Canada should be requested to enact legislation similar to that outlined above. However, the Commission notes that, should the Charter be adopted, and given its application to all matters within the authority of the Parliament of Canada, legislation protecting witnesses against the direct use of their evidence in criminal proceedings would no longer be necessary.

(ii) Class Actions

During the past year, the Commission completed its examination of the law of class actions, a matter referred to the Commission by the Attorney General in November, 1976. The *Report on Class Actions*, consisting of three volumes and twenty-two chapters, and containing a Draft Bill for a *Class Actions Act*, was submitted to the Attorney General on March 31, 1982.

In its Report, the Commission concludes that the present class action provision, Rule 75 of the Supreme Court of Ontario Rules of Practice, is deficient in many respects. First, the Rule is unduly restrictive, since it would seem to prohibit, *inter alia*, class actions involving claims for damages that must be assessed individually. It is also the view of the Commission that Rule 75 affords insufficient protection to absent class members — that is to say, members of the class other than the representative plaintiff. For example, the Rule is silent on the right of the representative plaintiff to settle the class action on behalf of the class without notice to the class members or approval of the court, thereby making abuse of the class action procedure possible. The Commission also finds existing procedural alternatives to class actions, such as joinder, consolidation, and the test case, to be inadequate to deal with the mass wrongs that are a feature of today's technological society.

In chapter 4 of the *Report on Class Actions*, the Commission turns its attention to the costs and benefits of the adoption in Ontario of a revised class action procedure. Relying on a number of existing empirical studies, as well as on the Commission's own study of class actions in the United States federal courts, the Commission concludes that the benefits of class actions — judicial economy, increased access to justice, and deterrence of wrongful or illegal behaviour — outweigh their costs. Moreover, the Commission finds that many of the arguments that have been raised against class actions, such as the "legalized blackmail" argument, are not supported by

the empirical evidence. Consequently, the Commission recommends the adoption in Ontario of a new and expanded class action procedure designed to facilitate the bringing of class actions and to enable courts to preclude inappropriate class actions on a case-by-case basis. The utility of a new and expanded class action procedure is further described in chapter 5 of the Report, where the Commission notes the substantive law areas in which such a procedure might be usefully employed. Among the substantive law bases for class actions discussed by the Commission are civil rights, securities law, consumer and trade practices, mass accidents, and environmental law.

The remainder of the Report is devoted to the design of a new and expanded class action procedure. In chapter 6, the Commission examines the arguments for and against private and public initiation of class actions. While the Commission ultimately recommends a class action procedure similar to Rule 23 of the United States Federal Rules of Civil Procedure, incorporating private initiation of class proceedings by a member of the class and judicial approval of the maintenance of every class suit, it does recognize that the Attorney General should have a role to play in such litigation. Accordingly, notice to the Attorney General of every class action commenced under the proposed *Class Actions Act* is recommended, with a right in the Attorney General to apply to the court to intervene in respect of any aspect of a class action that raises a matter of public interest, and a discretion in the court to permit the Attorney General in limited circumstances to act as the representative plaintiff. Chapter 6 also outlines briefly the main features of the Commission's proposed class action mechanism. The Commission envisages a three-stage procedure involving judicial "certification" of a class action, proceedings to resolve the issues common to the class, followed, where necessary, by proceedings to determine individual issues.

Chapters 7, 8, and 9 of the *Report on Class Actions* outline the conditions that must be satisfied before the court will certify a class action or, in other words, permit an action to be maintained in class form. The first certification test that the Commission recommends is a preliminary merits test. Only those class actions brought in good faith with a reasonable possibility that material questions of fact and law common to the class will be resolved at trial in favour of the class would be certified under the Commission's proposal. The mere fact that the action as pleaded discloses a reasonable cause of action would not be sufficient to satisfy this test.

Three additional certification tests are recommended by the Commission in chapter 8 of the Report. Two of those conditions — the numerosity and common questions tests — are relatively uncontroversial. Given the purposes ascribed to class actions by the Commission, particularly judicial economy, a requirement that the class on whose behalf the action is brought be numerous and that a class action raise questions of

fact or law common to the members of the class would seem obvious. The common questions test, it should be noted, is considerably less stringent than the “same interest” test applied under Rule 75 of the Supreme Court of Ontario Rules of Practice. The Commission does not recommend as a precondition to the certification of a class action that the class be so numerous as to make joinder impracticable or that questions common to the class predominate over issues affecting individual members of the class — conditions imposed by Rule 23 of the United States Federal Rules of Civil Procedure — on the ground that such conditions would reduce the flexibility of the proposed class action procedure. Moreover, it is the Commission’s view that such requirements are more appropriately considered under the superiority test that the Commission advocates in chapter 9 of the Report.

A further condition for certification proposed for inclusion in the *Class Actions Act* would fill a major gap that now exists in respect of class actions brought pursuant to Rule 75. To safeguard the interests of absent class members, the Commission recommends that an action should be allowed to be maintained in class form only if the court is satisfied that the representative plaintiff will fairly and adequately protect the interests of the class. In making this determination, a court would be authorized to consider whether provision has been made for competent legal representation that is adequate for the protection of the interests of the class. The proposed *Class Actions Act* would also permit the court to make an order substituting another class member as representative plaintiff where the initial representative plaintiff is found to be “inadequate”.

To limit the impact of class actions on the courts, the Commission recommends the adoption of two additional certification tests — a superiority and a cost-benefit test. The former would ensure that class actions are employed only where the court is satisfied that a class action is superior to other available methods for the fair and efficient resolution of the underlying controversy. In making this determination, courts would be required to consider, *inter alia*, the following factors, none of which by itself would necessarily be conclusive: whether questions of fact or law common to the members of the class predominate over any questions affecting only individual class members; whether a significant number of members of the class have a valid interest in individually controlling the prosecution of separate actions; whether the class action would involve claims that are or have been the subject of any other proceedings; whether other means of resolving the claims are less practicable or less efficient; and whether the administration of the class would create greater difficulties than those likely to be experienced if relief were sought by other practicable means. The possibility of resorting to joinder or some other procedural device or administrative procedure would be canvassed by a court under the fourth of the abovementioned factors. The “manageability” of a class

action would be required to be judicially canvassed under the last of these factors.

Finally, a court would be authorized to refuse to certify a class action, despite its meeting all the other tests for certification, where the court was satisfied that the adverse effects of the proceedings upon the class, the courts, or the public would outweigh its benefits. This unique provision would permit a court, for example, to balance the impact of class litigation on the administration of justice in the Province against the amount of relief likely to be secured by the suit or the deterrent value of the particular class action. It should be noted that the Commission recommends that the onus of establishing that the costs associated with a class action outweigh its benefits rest upon the person who so contends. Given that a cost-benefit analysis will normally only be undertaken once the court has determined that a class action is the superior procedural device to resolve the controversy, and given the serious consequences that would flow from a refusal to certify in such circumstances, imposing the onus on the person who contends that the benefits of the class action will be outweighed by its costs seems appropriate.

Chapters 10, 11, and 15 of the Report focus upon various procedural issues concerning the conduct of class actions. Chapter 10 deals with the certification hearing, the timing thereof, the manner in which evidence is to be put before the court, and the powers of a court in disposing of the certification issue. Under the Commission's recommendations, a court could grant or deny certification, making any and all amendments to the proceedings necessitated by its order. A court would also have the power to amend a certification order, and to set aside an order certifying an action as a class action where it is satisfied that the action no longer meets the prerequisites for certification.

In chapter 11, entitled "The Conduct of Class Actions", the Commission's focus is on more general procedural questions, such as which courts should have jurisdiction over class actions brought pursuant to the proposed *Class Actions Act*, and the general management powers to be enjoyed by those responsible for adjudicating class actions. The Commission proposes that class actions should be heard only in the High Court of Justice and in the county and district courts. A class action, once commenced, would be assigned to a particular judge, who would preside over all pre-trial motions and interlocutory proceedings until the trial of the action. Another judge would then preside over the trial of the common questions and would also be responsible for supervising any subsequent proceedings. Consistent with recommendations made in previous reports of the Commission, it is further recommended that class actions be tried by a judge without a jury. Insofar as the powers of the judge presiding over a class action are concerned, the Commission proposes that he should be invested with a broad management power to make all appropriate orders

determining the course of a class action for the purpose of ensuring the fair and expeditious determination of the action.

The resolution of individual questions to which a class action might give rise is discussed in chapter 15 of the *Report on Class Actions*. The determination of individual issues such as damages and reliance would constitute the final stage of the Commission's envisaged three-stage class action procedure. To maximize the access to justice function of class actions, the Commission recommends that the judge who decides the common questions should have a broad discretion to fashion proceedings for the resolution of individual issues and a duty to order the simplest, least expensive, and most expeditious method of determining these issues that is consistent with fairness to the class members, the defendant, and the representative plaintiff.

Under the Commission's recommendations, the judge who has decided the common questions would be able to conduct the individual proceedings alone, or with the assistance of other judges of the same court; he would be empowered to appoint one or more persons, other than a judge, to conduct the individual proceedings by way of inquiry and report; and he would be authorized to provide for such individual proceedings as agreed upon by the representative plaintiff and the defendant.

Among the other procedural matters addressed in the Report are the rights of discovery of the representative plaintiff, the defendant, and the absent class members at various stages of a class action; the *res judicata* effect of a class action judgment; the need for notice to absent class members at various times during the course of a class action; rights of appeal; the right of class members to "opt out" of a class action; limitation periods and class actions; and the need for court approval of class action settlements.

The Commission proposes major changes in the law of class actions in the areas of costs and monetary relief. Insofar as costs are concerned, the Commission recognizes the need for a change from the present rule that costs usually follow the event. In place of this "two-way" costs rule, the Commission proposes a general "no-way" costs rule. In other words, a successful litigant in a class action would not normally be able to recover his party and party costs from his unsuccessful adversary. A court would be authorized to depart from this general no-way costs rule in three instances: at the certification hearing, where it would be unjust to deprive the successful party of costs; in the event of vexatious, frivolous, or abusive conduct on the part of either of the parties; and in the case of interlocutory proceedings. The proposed no-way costs rule would not apply to individual proceedings, where the ordinary rule that costs follow the event would continue to govern.

With respect to the fees of the lawyer retained by the representative plaintiff, the Commission recommends that a type of court-approved contingent fee arrangement should be possible. Although the representative plaintiff and his lawyer would be permitted to enter into an agreement that provides that the lawyer will be entitled to a fee only in the event that the action is successful or confers benefits upon the members of the class by way of a settlement, the agreement may neither stipulate the amount of the lawyer's fee nor prescribe a method by which this fee is to be calculated. The determination of the fee to which the class lawyer is entitled would be left to the court, with a duty imposed upon the court to award a fee that is fair and reasonable compensation in light of the risk assumed by the lawyer in undertaking the litigation on a contingent basis. A somewhat similar scheme is proposed in respect of disbursements incurred by the class lawyer on behalf of the class.

The fee to which the class lawyer is entitled, whether or not a contingent fee agreement of the type described above is entered into, would be paid out of any recovery realized by the class proceedings. This fee, it is recommended, should constitute a first charge on the class action recovery and be payable on a proportional basis against amounts ordered to be paid to class members. The Report, in addition, deals with the issues of security for costs and payment into court in respect of both the common questions stage and individual questions stage of class proceedings.

In the area of monetary relief, the major thrust of the Commission's proposals is to facilitate class actions where the claim is one for damages, an area in which the present law is less than satisfactory. First, the Commission proposes the use of "bifurcated" proceedings — common proceedings to dispose of common questions followed by individual proceedings to determine individual questions — where all the issues to which a class action gives rise cannot be disposed of without resort to individual proceedings. Secondly, the Commission makes clear in its proposed *Class Actions Act* that certification of a class action should not be refused solely on the ground that the relief claimed includes a claim for damages that would require individual assessment in subsequent proceedings involving the defendant or arises out of or relates to separate contracts between members of the class and the defendant. In this way, the Commission seeks to avoid the major restrictions imposed on the use of class actions by the present law.

Thirdly, the Commission recommends that the court should be able to make an aggregate award of monetary relief in appropriate circumstances. In this way, the total liability of the defendant to the class could be determined as a common question, without resorting to individual proceedings. Where an aggregate award of monetary relief is ordered, the court is authorized to distribute the relief in a number of ways. For example, where feasible, the court could order direct distribution by the defendant to the individual class members. The court is also authorized to

assume responsibility for a direct distribution. Where it is not practicable to determine those members entitled to share in an aggregate award or the exact share that should be allocated to particular class members, the court is authorized to make an average distribution if the failure so to order would result in the denial of recovery to a substantial number of class members. Where neither a direct distribution nor an average distribution is possible, the court would be obliged to afford class members a reasonable opportunity to claim their shares of an aggregate award in proceedings designed to minimize the burden upon members of the class. For example, the court is expressly authorized to employ proof of claim forms to enable class members to establish their claims.

Where there is a residue of an aggregate award after resort to the abovementioned distribution techniques, the court may make a *cy-près* distribution, or order that the residue be forfeited to the Crown or returned to the defendant unconditionally. A *cy-près* distribution would be appropriate where it might reasonably be expected to benefit some or all of the class members and a reasonable number of class members, who would not otherwise receive monetary relief, would benefit therefrom.

In the final chapter of the Report, the Commission deals with a number of miscellaneous issues. For example, the Commission recommends that the rules of evidence should be amended to permit greater use of statistical, including sampling, evidence in class actions. Finally, the Commission makes recommendations regarding the scope of the Act, including its application to class actions commenced but not completed before the proposed *Class Actions Act* comes into force, and to representative actions authorized by other statutes.

THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

Under its founding statute, the Commission may inquire into and consider any matter relating to reform of the law. Accordingly, the Commission may initiate research on its own motion. During the past year, a Project on Remedies for Wrongful Intentional Interference with Goods was commenced in this way.

PROJECTS IN PROCESS

(i) The Law of Trusts

While the Law of Trusts Project is well advanced, it has been necessary, pending completion of the *Report on Class Actions*, to suspend work on the preparation of the *Report on the Law of Trusts* and draft revised *Trustee Act*. With the submission of the Class Actions Report to the Attorney General, the Commission intends to give priority to this Project. In this task, we are fortunate to have the expert assistance of

Professor D.W.M. Waters, of the Faculty of Law, University of Victoria, and of L.R. MacTavish, Esq., Q.C., former Senior Legislative Counsel, who will advise us in the preparation of the proposed revised Act. We anticipate that the Report and the revised *Trustee Act* will be submitted to the Attorney General by the end of the coming year.

(ii) Administration of Estates of Deceased Persons

During the year, the Commission considered a number of Research Reports prepared by the Project Director, Professor G.W. Alexandrowicz, of the Faculty of Law, Queen's University, and containing his recommendations for reform of the law governing estate administration. The Research Reports were based upon earlier research papers prepared by a Research Team and considered by an Advisory Committee of experts in estate administration, constituted under the chairmanship of Malcolm Archibald, Esq., Q.C. The writing of the *Report on the Administration of Estates of Deceased Persons* will commence following resolution of certain residual issues. Work will also begin shortly on a proposed new *Administration of Estates Act*, which will consolidate, in a revised and expanded form, relevant portions of the *Trustee Act*, the former *Devolution of Estates Act*, and the provisions governing practice under the *Surrogate Courts Act* and Rules. The proposed new Act will also codify and revise a number of common law doctrines to which estate administration is now subject.

The Commission hopes to make substantial progress towards completion of this Project in the coming year.

(iii) The Hague Convention Concerning the International Administration of the Estates of Deceased Persons

In our last Annual Report, the Commission stated that, while we have considered the question whether the Hague Convention should be given effect in Ontario, we have yet to decide whether the Convention should be dealt with in conjunction with our consideration of the Estates of Foreign Decedents, as part of the Project on the Administration of Estates of Deceased Persons, or whether this topic should form the subject of a separate Report. The Commission hopes to be in a position to resolve these issues in the near future.

(iv) Basic Principles of Land Law

It is expected that work on this Project, which has been long deferred in order to satisfy other commitments, will resume in the coming year.

(v) The Law of Mortgages

Work on the Law of Mortgages Project is proceeding under the capable direction of Professor Barry J. Reiter, of the Faculty of Law,

University of Toronto, who assumed directorship of the Project last fall from Professor Richard H. McLaren, of the Faculty of Law, University of Western Ontario. Professor McLaren was unable to continue as Project Director because of other commitments, but has agreed to participate in the Project as a member of the Research Team.

The Commission believes the law of mortgages to be in need of reform and proposes to conduct a thorough review of this important area of the law. Recognizing that the expertise required to evaluate the efficacy of mortgage law in Ontario resides in those actively involved in mortgage transactions as borrowers, lenders, regulators, and lawyers, we invited these parties to submit letters or written briefs and, in particular, we requested comments concerning perceived problems in the present law and practice. As an additional measure to ensure that we receive the practical advice crucial to effective law reform, the Commission plans to establish an Advisory Committee of experts representative of diverse interests, who will be available for consultation for the balance of the Project.

The Law of Mortgages Project will be conducted in three stages. The first stage, which has been completed, involved preliminary consultation by Professor Reiter with selected representatives of the various groups interested in mortgage law, with a view to identifying problems that should be addressed in the research. This stage of the Project culminated in a detailed research plan, prepared by the Project Director and approved in principle by the Commission, which describes the research to be conducted in the next two stages.

In the second stage, the Research Team will conduct research on three major topics. The first topic deals with the initiation of mortgage relations, and research will be concerned primarily with the issue of proper disclosure to the borrower. The legal effect of mortgages, including such matters as shortened and plain language documents, privileges, and mortgage mathematics, will constitute the second topic to be examined. The last topic will be the complex and difficult subject of mortgage remedies. The purpose of the research will be to propose alternative directions in which reform might proceed. In the fall of the coming year, the Commission will consider the research and approve general directions for reform.

The third stage of the Project will consist of further research that will investigate in detail how best to implement the directions for reform that have been approved by the Commission. In January, 1984, it is expected that a final Research Report will be submitted to the Commission, which will present an integrated scheme of specific policy recommendations designed to remedy the deficiencies of the present law of mortgages.

The Commission anticipates that the *Report on the Law of Mortgages* will be submitted to the Attorney General by the end of 1984.

(vi) Enforcement of Judgment Debts and Related Matters

In 1981, the Commission published the first three Parts of its *Report on the Enforcement of Judgment Debts and Related Matters*. During the past year, it was necessary, in order to devote our resources to completion of the References on Class Actions and Witnesses Before Committees of the Legislature, to suspend work on the remaining Parts of the Enforcement of Judgment Debts Project. However, we anticipate that Part IV, concerned with prejudgment enforcement remedies and voidable transactions, and Part V, devoted mainly to the distribution of proceeds of enforcement and the liability of the sheriff arising out of his enforcement responsibilities, will be submitted to the Attorney General within the coming year.

(vii) The Law of Standing

Details of the content of this Project are contained in previous Annual Reports. During the past year, the Commission received a comprehensive research paper dealing with reform of the law of standing. In the coming year, we hope to turn our attention to the policy issues raised in this paper.

(viii) Powers of Entry

The Powers of Entry Project concerns powers conferred by Ontario statutes and regulations to enter upon lands, buildings, private dwellings, and other property. Under the guidance of the joint Project Directors, Professor Alan Grant, of Osgoode Hall Law School, York University, and Professor Stanley M. Makuch, of the Faculty of Law, University of Toronto, this Project has been brought close to completion. During the last year, the Commission considered several outstanding issues arising out of the draft Report concerning powers of entry approved the previous year. In addition, a proposed new *Powers of Entry Act* has been prepared, which will be appended to the Commission's Report. We expect to submit our Report to the Attorney General in the fall.

(ix) Law of Contract Amendment

As noted in previous Annual Reports, this Project is divided into three Phases. Phase I concerns the formational aspects of the law of contract, while the remaining two Phases deal, respectively, with substantive and remedial issues. Under the guidance of the joint Project Directors, Professor Jacob S. Ziegel and Professor Stephen M. Waddams, both of the Faculty of Law, University of Toronto, substantial progress has been made. The Commission has considered three Research Reports containing the Project Directors' recommendations for reform with respect to the topics dealt with in Phase I. In addition, almost all research on the topics allocated to Phases II and III of the Project has been completed.

Due to the onerous demands of the Class Actions Reference, the Commission has been able to consider only one Research Report dealing

with Phase II during the past year. In the coming year, we hope to prepare a draft Report on Phase I and to consider the balance of the topics in Phase II.

Throughout the course of the Project, the Commission has been ably assisted by an Advisory Group of experts, consisting of members of the judiciary and practising lawyers, under the chairmanship of James M. Spence, Esq.

(x) Contribution Among Wrongdoers

This Project reviews the law respecting the allocation of responsibility between two or more persons whose conduct has caused the same injury, as well as the law relating to contributory negligence, which also involves the apportionment of loss. During the past year, the Project Director, Professor John M. Evans, of Osgoode Hall Law School, York University, completed the research relating to contribution among wrongdoers, and the Commission concluded its consideration of the many difficult policy issues that were raised in the research papers. Preparation of a draft Report will commence in the spring, following consideration of a research paper on contributory negligence prepared by Professor J.B. Dunlop, of the Faculty of Law, University of Toronto.

(xi) Remedies for Wrongful Intentional Interference with Goods

In November, 1981, the Commission formally added to its programme a Project on Remedies for Wrongful Intentional Interference with Goods. This topic has been the subject of law reform activity in other jurisdictions. Professor George R. Stewart, of the Faculty of Law, University of Windsor, and Professor Ralph L. Simmonds, of the Faculty of Law, McGill University, have been appointed joint Project Directors and work has commenced. In order to obtain the benefit of the expertise of those concerned with the operation of this area of the law, the Commission has invited submissions from persons actively involved in consumer protection, lending, data collection, and the administration of justice on all aspects of the Project and, in particular, specific problem areas and possible solutions.

The Project will be conducted in two stages. In the first stage, research will be prepared on the following topics:

- (1) specific relief remedies, including replevin, detinue, injunctions, and declarations;
- (2) self-help remedies, including recaption of chattels and contractual rights;
- (3) damage remedies, including trespass, conversion, and interference with a reversionary interest;
- (4) analogous remedies in the civil law, based on a consideration of the law of Quebec, France, and Germany; and

- (5) an empirical study of the incidence of the remedies and the patterns of preference, based on court records, a survey of sheriffs' offices, and data provided by consumer and credit organizations and sales and financial institutions.

The research on the first three topics will include a statement of the present law, and will identify problem areas and review the position in other jurisdictions. Where statutory change in the law is appropriate, alternative proposals for reform will be made. It is expected that the first stage of the Project will be completed in November, 1982.

In the second stage, the proposals and materials produced during the first stage will be evaluated by an Advisory Board, which will include members of the judiciary and of the legal profession, court officials and administrators, and other interested persons identified during the course of the empirical study. We expect that this stage of the Project will be completed in the spring of 1983, and that a final Research Report will be submitted to the Commission by the end of 1983.

FUTURE PROGRAMME

With the completion of the References on Class Actions and Witnesses Before Committees of the Legislature, the Commission is now in a position to devote substantial efforts to bringing to fruition a number of projects that are well advanced. While the projects discussed in this Report will occupy us for the foreseeable future, we intend to review our programme with a view to considering possible additions thereto and to bringing forward projects deferred in the past.

GENERAL ACTIVITIES

In the process of law reform, it is important to maintain a working relationship with practising members of the legal profession. The Chairmah welcomed the opportunity to speak of the work of the Commission at meetings of the following County and District Law Associations: the Algoma District Law Association; the Durham Region Law Association; the Essex County Law Association; the Grey and Bruce Bar Associations; and the York Region Law Association. So, too, the Chairman and the Honourable R.A. Bell, P.C., Q.C., were guests at a meeting of the Officers and Trustees of the Carleton County Law Association. We are much obliged to all those whose efforts combined to make these visits both successful and enjoyable.

The Chairman, on behalf of the Commission, attended a meeting of the Canadian Law Reform Agencies at Whitehorse in August, 1981. This meeting provided an opportunity to consider developments that have occurred elsewhere, and to continue the Commission's liaison with the law

reform agencies across Canada. Immediately following the meeting, the Chairman represented the Commission at the 63rd Annual Meeting of the Uniform Law Conference in the same city.

During the past year, the Chairman was pleased to represent the Commission on a number of other occasions. These included an address to the Quebec Risk and Insurance Management Association, and an address to the University Arts Women's Club. The Chairman also participated in the Speakers Programme of the Faculty of Law of the University of Toronto, and spoke on the process of law reform in Ontario. During the same period, two of the Commission's Legal Research Officers, M.A. Springman, Esq. and E. Gertner, Esq., took part in panel discussions devoted to the subject of the enforcement of judgment debts. In October, 1981, they presented a paper entitled "Reform of the Law of Debtor and Creditor: The Ontario Law Reform Commission's Report on the Enforcement of Judgment Debts and Related Matters" to the Eleventh Annual Workshop on Commercial and Consumer Law held at the Faculty of Law, University of Toronto. In the spring of 1982, Messrs. Springman and Gertner were participants in "The Agony and the Ecstasy: Remedies in the Enforcement of Judgment Debts", a programme presented under the auspices of the Ontario Branch of the Canadian Bar Association.

In the year under review, the Commission has been privileged to receive visitors from other law reform agencies. The visitors, whom we were pleased to receive, included: W.H. Hurlburt, Esq., Q.C., Director, Institute of Law Research and Reform, Alberta; Colin I. Patterson, Esq., Chairman, Contracts and Commercial Law Reform Committee of New Zealand; and Paul J. Garde, Esq., Research Officer, Law Reform Commission of New South Wales. We were also visited by members of the Nigerian Law Reform Commission. The members whom we enjoyed meeting were: Sir Darnley A.R. Alexander, Kt., C.F.R., C.B.E., Chairman; Dr. S.N.C. Obi, Dr. A.B. Yusuf, Mrs. T.M. Osindero, Dr. A. Abubakar, Professor R.O. Ekundare, and Dr. E.E.J. Okereke, Commissioners; and Mr. T.N. Nnadi, Secretary/Director. It was also a pleasure to welcome Mr. Patrick O. Okoli, Senior First Secretary, Political and Economic Affairs, Nigerian Embassy, Ottawa, who accompanied the Commission.

Other guests, whom we were privileged to welcome, included: The Honourable Edward Milton Culliton, former Chief Justice of Saskatchewan; C. Uchenna Osakwe, Esq., and Alhaji Usman D. Bungudu, Esq., the Director and Chairman, respectively, of the Legal Aid Council of Nigeria.

In our last Annual Report we referred to the Committee on the Sale of Goods that was established by the Uniform Law Section of the Uniform Law Conference of Canada. The Committee, which was chaired by our Chairman, completed its work and delivered its Report at the 63rd Annual Meeting of the Conference. At this meeting, the Uniform Law Section

resolved that the Report of the Committee be accepted, that the Legislative Drafting Section of the Conference be requested to review the drafting of the Committee's Draft Bill, and that the product be adopted as a Uniform Act and recommended for enactment in that form.

ACKNOWLEDGMENTS

Attached to this Report are three Appendices relating to the activities of the Commission. In Appendix A, we set out two formal documents dealing with a change in the membership of the Commission during the past year. Appendix B consists of a list of Reports prepared and submitted by the Commission since its inception in 1964, together with a table indicating the extent to which legislation concerning our proposals has been enacted.

Appendix C contains a list of the officers and permanent staff of the Commission. The Commission regrets the departure during the past year of two members of the administrative staff. To Mrs. Toni Farrace and Mrs. Christine Seguin, we express our thanks and wishes for success in the future. To Mrs. Cora Calixterio, who joined the administrative staff, we extend a sincere welcome. Our heartfelt thanks and appreciation are also extended to Miss A.F. Chute, Secretary to the Commission, and to the administrative staff, for their dedicated assistance.

To you Mr. Attorney, and to the officers of your Ministry, we wish to express our sincere thanks for your support and encouragement in our work.

All of which is respectfully submitted,



Derek Mendes da Costa
Chairman



Richard A. Bell
Commissioner



H. Allan Leal
Vice Chairman



William R. Poole
Commissioner



Barry A. Percival
Commissioner

March 31, 1982

APPENDIX A

1. Extract from the Minutes of the Ontario Law Reform Commission, September 10, 1981.

The following motion, presented by the Honourable R.A. Bell, P.C., Q.C., and seconded by W.R. Poole, Q.C., was passed by unanimous vote:

The members of the Ontario Law Reform Commission wish to record their deep regret at the resignation of the Honourable George A. Gale, C.C., as Vice Chairman and member of the Commission. That his health has not permitted him to continue is a matter of sadness to Commission members, each of whom hopes that release from responsibility may restore him to his customary vigorous physical and intellectual activity.

The career of 'Bill' Gale as barrister, judge, Chief Justice of the High Court, Chief Justice of Ontario and more recently as a law reformer has been so distinguished that any tribute of his colleagues may appear redundant. His grateful country has already awarded him its highest titular order, Companion of the Order of Canada. As a jurist, he has had well-deserved national and international recognition.

His former colleagues would wish to speak of his personal qualities. His unfailing wisdom, his 'down to earth' 'feet on the ground' approach to all legal issues and problems, his innovative and original mind, his searching and articulate capacity to diagnose legal and social problems and to submit realistic solutions, but above all his friendliness and his 'without side' approachability; these are the qualities of a great Canadian who will be long remembered in the area of law reform.

One of our colleagues expressed to him the hope that his subsequent career might make Sir William Mulock appear like a youngster! That is the hope of all Commissioners as we bid a reluctant farewell to a unique Canadian.

2. Extract from the Minutes of the Ontario Law Reform Commission, October 5, 1981.

The following motion, presented by the Honourable R.A. Bell, P.C., Q.C., and seconded by W.R. Poole, Q.C., was passed by unanimous vote:

It is not the Commission's role to reflect or comment upon the

wisdom of appointments that may be made to it by the Lieutenant Governor in Council.

But our pleasure is so great at the return to our ranks of our former Chairman, Dr. H. Allan Leal, Q.C., that we cannot refrain from expressing our delight that he is resuming his recognized role as one of the most significant law reformers in the common law world. His recent and successful career as Deputy Attorney General of Ontario adding, as it did, to his knowledge of the implementation of policy, will be of great benefit to the Commission.

As we welcome a long-time colleague and friend as our Vice Chairman, we express our satisfaction that he has rejoined us. Together, we face gladly the challenge to continue and accelerate the pace of law reform in the rapidly changing society of today.

APPENDIX B

REPORTS OF THE ONTARIO LAW REFORM COMMISSION

	Title	Date of Report	Original Legislation Concerning Commission Proposals
1.	Report No. 1 [The Rule Against Perpetuities]	February 1, 1965	<i>The Perpetuities Act, 1966, S.O. 1966, c. 113</i>
2.	Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	March 1, 1966	<i>do.</i>
3.	Report No. 2 [The Wages Act: Assignment of Wages]	March 3, 1965	<i>The Wages Amendment Act, 1968, S.O. 1968, c. 142</i>
4.	Report No. 3 on Personal Property Security Legislation	May 28, 1965	<i>The Personal Property Security Act, 1967, S.O. 1967, c. 72</i>
5.	Report No. 3A on Personal Property Security Legislation	May 18, 1966	<i>do.</i>
6.	Report on The Evidence Act: Admissibility of Business Records	February 16, 1966	<i>The Evidence Amendment Act, 1966, S.O. 1966, c. 51, s. 1</i>
7.	Report on The Mechanics' Lien Act	February 22, 1966	<i>The Mechanics' Lien Act, 1968-69, S.O. 1968-69, c. 65</i>
8.	Supplementary Report on The Mechanics' Lien Act	May 26, 1967	<i>do.</i>
9.	Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	See <i>The Mechanics' Lien Amendment Act, 1975, S.O. 1975, c. 43</i> <i>The Ministry of Transportation and Communications Creditors Payment Act, 1975, S.O. 1975, c. 44</i> <i>The Public Works Creditors Payment Repeal Act, 1975, S.O. 1975, c. 45</i>

	Title	Date of Report	Original Legislation Concerning Commission Proposals
10.	Report on The Execution Act: Exemption of Goods from Seizure	December 9, 1966	<i>The Execution Amendment Act, 1967</i> , S.O. 1967 c. 26
11.	Report on The Law of Condominium	March 6, 1967	<i>The Condominium Act, 1967</i> , S.O. 1967, c. 13
12.	Report on the Basis for Compensation on Expropriation	September 21, 1967	<i>The Expropriations Act, 1968-69</i> , S.O. 1968-69, c. 36
13.	Report on the Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	<i>The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968</i> , S.O. 1968, c. 120
14.	Annual Report 1967	January 15, 1968	Not applicable
15.	Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	January 19, 1968	<i>Divorce Act</i> , S.C. 1967-68, c. 24, s. 26
16.	Report on the Proposed Adoption in Ontario of The Uniform Wills Act	February 5, 1968	<i>The Succession Law Reform Act, 1977</i> , S.O. 1977, c. 40 See <i>The Registry Amendment Act, 1978</i> , S.O. 1978, c. 8, s. 1
17.	Report on The Protection of Privacy in Ontario	September 10, 1968	See <i>The Consumer Reporting Act, 1973</i> , S.O. 1973, c. 97
18.	Report on Section 183 of The Insurance Act	October 3, 1968	—
19.	Report on Trade Sale of New Houses	October 4, 1968	See <i>The Ontario New Home Warranties Plan Act, 1976</i> , S.O. 1976, c. 52
20.	Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	<i>The Landlord and Tenant Amendment Act, 1968-69</i> , S.O. 1968-69, c. 58

	Title	Date of Report	Original Legislation Concerning Commission Proposals
21.	Report on Limitation of Actions	February 3, 1969	See <i>The Highway Traffic Amendment Act (No. 2)</i> , 1975, S.O. 1975, c. 37 <i>The Fatal Accidents Amendment Act</i> , 1975, S.O. 1975, c. 38 <i>The Trustee Amendment Act</i> , 1975, S.O. 1975, c. 39
22.	Annual Report 1968	April 7, 1969	Not applicable
23.	Report on the Age of Majority and Related Matters	June 3, 1969	<i>The Age of Majority and Accountability Act</i> , 1971, S.O. 1971, c. 98
24.	Report on the Status of Adopted Children	June 3, 1969	<i>The Child Welfare Amendment Act</i> , 1970, S.O. 1970, c. 96, s. 23
25.	Report on Family Law, Part I: Torts	November 4, 1969	<i>The Family Law Reform Act</i> , 1978, S.O. 1978, c. 2 (partial implementation)
26.	Report on Section 20 of The Mortgages Act	March 12, 1970	<i>The Mortgages Amendment Act</i> , 1970, S.O. 1970, c. 54, s. 1
27.	Report on Family Law, Part II: Marriage	April 6, 1970	<i>The Civil Rights Statute Law Amendment Act</i> , 1971, S.O. 1971, c. 50, s. 55 (partial implementation) <i>The Marriage Act</i> , 1977, S.O. 1977, c. 42 (partial implementation)
28.	Annual Report 1969	April 20, 1970	Not applicable
29.	Report on Actions Against Representatives of Deceased Persons	November 30, 1970	<i>The Trustee Amendment Act</i> , 1971, S.O. 1971, c. 32, s. 2
30.	Report on the Coroner System in Ontario	January 25, 1971	<i>The Coroners Act</i> , 1972, S.O. 1972, c. 98

	Title	Date of Report	Original Legislation Concerning Commission Proposals
31.	Report on Sunday Observance Legislation	February 26, 1971	<i>The Retail Business Holidays Act, 1975, S.O. 1975 (2nd Session), c. 9</i>
32.	Report on Land Registration	March 23, 1971	See <i>The Corporations Tax Amendment Act (No. 2), 1979, S.O. 1979, c. 89</i>
33.	Annual Report 1970	March 31, 1971	Not applicable
34.	Report on The Change of Name Act	May 31, 1971	<i>The Change of Name Amendment Act, 1972, S.O. 1972, c. 44</i>
35.	Report on The Mortgages Act, Section 16	June 18, 1971	—
36.	Report on Development Control	September 28, 1971	<i>The Planning Amendment Act, 1973, S.O. 1973, c. 168, s. 10</i>
37.	Report on Powers of Attorney	January 11, 1972	<i>The Powers of Attorney Act, 1979, S.O. 1979, c. 107</i>
38.	Report on Occupiers' Liability	January 11, 1972	<i>The Occupiers' Liability Act, 1980, S.O. 1980, c. 14</i>
39.	Report on Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
40.	Report on Review of Part IV of The Landlord and Tenant Act	March 31, 1972	<i>The Landlord and Tenant Amendment Act, 1972, S.O. 1972, c. 123</i>
41.	Annual Report 1971	March 31, 1972	Not applicable
42.	Report on the Non-Possessory Repairman's Lien	October 4, 1972	—
43.	Report on the Administration of Ontario Courts, Part I	February 26, 1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i> <i>The Judicature Amendment Act (No. 2), 1977, S.O. 1977, c. 51, s. 9</i>

	Title	Date of Report	Original Legislation Concerning Commission Proposals
44.	Annual Report 1972	March 31, 1973	Not applicable
45.	Report on the Administration of Ontario Courts, Part II	May 23, 1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>
46.	Report on Family Law, Part III: Children	September 25, 1973	<i>The Child Welfare Amendment Act, 1975, S.O. 1975, c. 1</i> (partial implementation) <i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40</i> (partial implementation) <i>The Children's Law Reform Act, 1977, S.O. 1977, c. 41</i> (partial implementation)
47.	Report on The Solicitors Act	September 28, 1973	—
48.	Report on Motor Vehicle Accident Compensation	November 6, 1973	—
49.	Report on the Administration of Ontario Courts, Part III	December 17, 1973	<i>The Judicature Amendment Act, 1975, S.O. 1975, c. 30</i> (partial implementation) See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i> <i>The Small Claims Courts Amendment Act, 1977, S.O. 1977, c. 52</i> (partial implementation)
50.	Report on Family Law, Part IV: Family Property Law	February 8, 1974	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40</i> (partial implementation) <i>The Family Law Reform Act, 1978, S.O. 1978, c. 2</i> (partial implementation) See <i>The Land Titles Amendment Act, 1978, S.O. 1978, c. 7</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>The Registry Amendment Act, 1978, S.O. 1978, c. 8</i>
51. Report on Family Law, Part V: Family Courts	February 8, 1974	See <i>The Unified Family Court Act, 1976, S.O. 1976, c. 85</i> <i>The Children's Probation Act, 1978, S.O. 1978, c. 41 (partial implementation)</i>
52. Annual Report 1973	May 6, 1974	Not applicable
53. Report on the International Convention Providing a Uniform Law on the Form of the International Will	July 3, 1974	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40, s. 42</i>
54. Annual Report 1974	March 31, 1975	Not applicable
55. Report on Family Law, Part VI: Support Obligations	April 18, 1975	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i> <i>The Family Law Reform Act, 1978, S.O. 1978, c. 2</i>
56. Report on Mortmain, Charitable Uses and Religious Institutions	February 27, 1976	<i>The Religious Organizations' Lands Act, 1979, S.O. 1979, c. 45</i> <i>The Anglican Church of Canada Act, 1979, S.O. 1979, c. 46</i> <i>The Registry Amendment Act, 1979, S.O. 1979, c. 94, s. 17</i>
57. Report on Landlord and Tenant Law	March 15, 1976	<i>The Residential Tenancies Act, 1979, S.O. 1979, c. 78 (partial implementation)</i>
58. Report on the Law of Evidence	March 29, 1976	—
59. Annual Report 1975	March 31, 1976	Not applicable

	Title	Date of Report	Original Legislation Concerning Commission Proposals
60.	Report on Changes of Name	August 16, 1976	<i>The Vital Statistics Amendment Act, 1978</i> , S.O. 1978, c. 81, s. 1 (partial implementation)
61.	Report on the Impact of Divorce on Existing Wills	February 28, 1977	<i>The Succession Law Reform Act, 1977</i> , S.O. 1977, c. 40, s. 17(2)
62.	Annual Report 1976	March 31, 1977	Not applicable
63.	Annual Report 1977	March 31, 1978	Not applicable
64.	Report on Sale of Goods	March 30, 1979	—
65.	Annual Report 1978	March 30, 1979	Not applicable
66.	Report on Products Liability	November 16, 1979	—
67.	Annual Report 1979	March 31, 1980	Not applicable
68.	Report on the Enforcement of Judgment Debts and Related Matters, Part I	February 20, 1981	—
69.	Report on the Enforcement of Judgment Debts and Related Matters, Part II	March 31, 1981	—
70.	Report on the Enforcement of Judgment Debts and Related Matters, Part III	March 31, 1981	—
71.	Annual Report 1980-81	March 31, 1981	Not applicable
72.	Report on Witnesses Before Legislative Committees	September 11, 1981	—
73.	Report on Class Actions	March 31, 1982	—

Many of the Commission's earlier reports are no longer in print. Reports that are still in print may be purchased from the Ontario Government Bookstore, 880 Bay Street, Toronto, or by mail order from Publications Services Section, 5th Floor, 880 Bay Street, Toronto, Ontario M7A 1N8. Telephone 965-6015. Toll free long distance 1-800-268-7540; in area code 807, 0-Zenith 67200.

APPENDIX C

OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

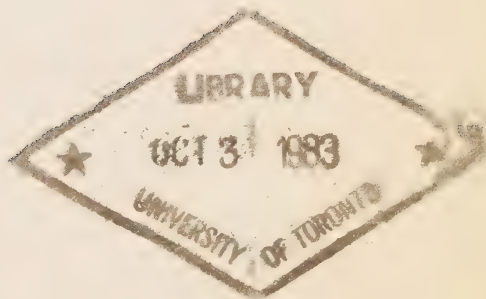
Chairman	Derek Mendes da Costa, Q.C., LL.B., LL.M., S.J.D., LL.D.
Vice Chairman	H. Allan Leal, Q.C., LL.M., LL.D.
Commissioners	Honourable Richard A. Bell, P.C., Q.C. William R. Poole, Q.C. Barry A. Percival, Q.C.
Counsel	M. Patricia Richardson, B.A., M.A., LL.B.
Secretary and Administrative Officer	Miss A. F. Chute
Senior Legal Research Officer	M.A. Springman, B.A., M.A., M.Sc., LL.B.
Legal Research Officers	Eric Gertner, LL.B., B.C.L. (Oxon) Ann M. Merritt, B.A., LL.B. Larry M. Fox, LL.B. Pamela M. Gibson, B.A., LL.B.
Administrative Assistant	Mrs. J.A. Brown, B.A.
Secretary to Chairman	Mrs. Stephanie Hlynka
Secretary to Vice Chairman	E.N. Page
Secretary to Counsel	Mrs. D.M. Halyburton
Secretary to Administrative Officer	Mrs. B.G. Woodley
Secretaries to Legal Research Officers	Mrs. Cora Calixterio Ms. V. Van Asperen, B.Sc.
Receptionist	Miss Mary M. O'Hara

SIXTEENTH ANNUAL REPORT

1982-83

ONTARIO LAW REFORM COMMISSION

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Ministry of the
Attorney
General

SIXTEENTH ANNUAL REPORT

1982-83

ONTARIO LAW REFORM COMMISSION



Ministry of the
Attorney
General

The Ontario Law Reform Commission was established by section 1 of the *Ontario Law Reform Commission Act*. Section 2(1) of the Act states that it is the function of the Commission to inquire into and consider any matter relating to (a) reform of the law having regard to the statute law, the common law and judicial decisions; (b) the administration of justice; (c) judicial and quasi-judicial procedures under any Act; and (d) any subject referred to it by the Attorney General. The Commissioners are:

DEREK MENDES DA COSTA, Q.C., LL.M., S.J.D., LL.D., *Chairman*

H. ALLAN LEAL, Q.C., LL.M., LL.D., D.C.L., *Vice Chairman*

HONOURABLE RICHARD A. BELL, P.C., Q.C.

WILLIAM R. POOLE, Q.C.

BARRY A. PERCIVAL, Q.C.

M. Patricia Richardson, M.A., LL.B., is Counsel to the Commission. The Secretary of the Commission is Miss A.F. Chute, and its offices are located on the Fifteenth Floor at 18 King Street East, Toronto, Ontario, Canada M5C 1C5.

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Ontario
Law Reform
Commission

To The Honourable R. Roy McMurtry, Q.C.
Attorney General for Ontario

Dear Mr. Attorney:

We have the honour to present the Sixteenth Annual Report of the Ontario Law Reform Commission, for the period April 1, 1982 to March 31, 1983.

INTRODUCTION

This Report is concerned with the activities of the Commission during the period April 1, 1982 to March 31, 1983. We are pleased to report that the year was a most productive one for the Commission.

During the year, the Commission submitted to the Attorney General three Reports. Two of these Reports were Parts IV and V of the Commission's *Report on the Enforcement of Judgment Debts and Related Matters*. These two Parts, together with Parts I, II and III, submitted earlier, complete the Commission's five Part Report on this important and formerly neglected topic. The third Report was the *Report on Powers of Entry*, which builds upon the pioneering work of the Royal Commission Inquiry into Civil Rights in Ontario, popularly known as the "McRuer Commission".

It is, perhaps, appropriate that the Commission's research had its genesis in the Report of the McRuer Commission. The Honourable James C. McRuer, O.C., LL.D., a former Chief Justice of the High Court of Ontario, was the first Chairman of the Commission, and was Vice Chairman until 1977. Thereafter, he served as a part-time member, and it is with a deep sense of loss that we record his final retirement from the Commission on June 1, 1982. The Commission's sentiments are more fully expressed in the Minutes of the July meeting of the Commission, the relevant extract of which is attached to this Report as Appendix A.

As in the past, the Commission has continued to receive suggestions for additions to its programme from members of the judiciary, the legal profession and the public. The Commission appreciates this interest in its work, and wishes to extend its thanks to all those who have taken the time to assist it in this way.

THE PROGRAMME: REFERRED MATTERS

Section 2(1)(d) of the *Ontario Law Reform Commission Act* requires the Commission to inquire into and to consider any matter relating to any subject referred to it by the Attorney General. During the past year, one new project, Human Artificial Insemination and Related Matters, was referred to the Commission. The Commission has already reported with respect to all other References it has received.

PROJECTS IN PROCESS

Human Artificial Insemination and Related Matters

On November 5, 1982, the Commission received a Reference to report on the legal issues relevant to the practice of human artificial insemination and related matters. The following extract from the Letter of Reference contains the Terms of Reference:

I wish to request that the Ontario Law Reform Commission inquire into and consider the legal issues relating to the practice of human artificial insemination, including 'surrogate mothering' and transplantation of fertilized ova to a third party. I would be pleased to have the Commission report on the range of alternatives for resolution of any legal issues that may be identified.

In conducting your study, I would be grateful if you would include the following considerations within the scope of the review:

1. The legal status and legal rights of the child and the safeguards for protecting the best interests of the child.
2. The legal rights and legal duties of each biological parent.
3. The legal rights and legal duties of the spouse, if any, of each biological parent.
4. The nature and enforceability of agreements relating to artificial insemination and related practices.
5. The nature and enforceability of agreements respecting custody of the child.
6. The legal rights and liabilities of medical and other personnel involved in performing artificial insemination and other related practices.
7. The legal procedures for establishing and recognizing the biological parentage of children born as a result of these practices.
8. The applicability of present custody and adoption laws in such cases.
9. The availability of information to identify the child and the parties involved.
10. Such medical and related evidence as may have a bearing on the legal issues raised in these cases.

I am certain that the Commission will appreciate the deep importance of these issues for the persons involved, particularly the children, and accordingly in the interests of these children, make the report available as soon as possible.

In view of the social importance of this Project, it was decided to place an Announcement, containing the Terms of Reference and inviting the submission of briefs, in each daily newspaper published in the Province and in the Ontario Reports. In addition, a copy of the Announcement was circulated to a broad group of persons and bodies in Ontario that the Commission felt might be interested in its research, including the following: religious organizations; hospitals; medical schools; children's aid societies; the College of Physicians and Surgeons of Ontario; the College of Family Physicians of Canada; and the Ontario Branch of the Canadian Bar Association. We are pleased to state that the Commission has now received some 35 briefs, and we are much obliged to all those who contributed so willingly to our study. Their comments will, indeed, be carefully considered by the Commission.

In response to the Attorney General's request to report as soon as possible, the Commission forthwith commenced work on the Project and was extremely fortunate to secure the services of Professor Bernard M. Dickens of the Faculty of Law, University of Toronto, as Project Consultant. A Research Design, prepared by Professor Dickens, has been approved by the Commission and research has commenced. Further, the Commission has decided to appoint an Advisory Board to assist it in the many difficult and sensitive decisions that it will have to make in the course of its research.

THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

Under its founding statute, the Commission may inquire into and consider any matter relating to reform of the law. Accordingly, during the last year, the Commission commenced one project, dealing with Time Sharing, on its own initiative.

(a) COMPLETED PROJECTS

(i) Enforcement of Judgment Debts and Related Matters

During the past year, the Commission submitted to the Attorney General Parts IV and V of its *Report on the Enforcement of Judgment Debts and Related Matters*. The completion of these two Parts marks the end of several years of study in a hitherto neglected but increasingly vital area of the law.

The five Parts of the Report examine in considerable detail the many facets of the law relating to the rights of debtors and unsecured creditors after a money judgment has been obtained. In Parts IV and V, as in the first three Parts, the Commission is animated by a desire to clarify, modernize, and rationalize the law. Part IV deals with two related areas of the law of

enforcement: prejudgment remedies and voidable transactions. With a notable exception in the case of *Mareva* injunctions, the law respecting these two topics, which are linked by a concern with the rights of creditors to prevent their debtors from frustrating the enforcement of future or existing judgment debts, has essentially been static for many generations. With respect to prejudgment remedies, the *Absconding Debtors Act*, for example, offers inadequate protection against unscrupulous debtors. Accordingly, in Part IV the Commission recommends the repeal, with one exception, of all existing provisional remedies and their replacement by a single new, more comprehensive, prejudgment remedy, designed to protect creditors while safeguarding the interests of debtors. While creditors would not be frustrated by the restrictive provisions of the present law, prejudgment attachment would be available only after, *inter alia*, the creditor has established under oath the existence of one or more of the proposed grounds for attachment and a strong *prima facie* claim against the debtor, and that his application for prejudgment attachment is made *bona fide* for the sole purpose of obtaining security for the enforcement of any future judgment in the main action against the debtor.

Insofar as prejudgment arrest is concerned, the Commission proposes the abolition of this remedy. However, the Report recommends the retention of section 24 of the *Family Law Reform Act*, dealing with absconding maintenance and support debtors.

With respect to voidable transactions legislation — namely, the *Fraudulent Conveyances Act* and the *Assignments and Preferences Act* — the Commission reviews critically the mass of statutory provisions and occasionally conflicting common law rules. In lieu of the present regime governing fraudulent conveyances — whereby a conveyance may be set aside where the transferor intended to prejudice his creditors — the Commission recommends that a conveyance should be voidable where the effect of the conveyance, rather than the intent of the debtor, was to prejudice his creditors. In this manner, fraudulent behaviour that does not in fact affect creditors will be left to the criminal law, while behaviour that is prejudicial to creditors will be actionable, irrespective of the intent of the debtor.

With respect to fraudulent preferences, the Commission recommends the creation of a new regime, distinguishing arm's length and non-arm's length preferences, and designed to further the general principle of equality among creditors. Unlike arm's length preferences, non-arm's length preferences would be set aside where the preference has had the effect of prejudicing creditors, irrespective of the debtor's intent.

In the context of both fraudulent conveyances and fraudulent preferences, however, saving provisions are proposed by the Commission to protect certain types of transaction.

In Part V of the *Report on the Enforcement of Judgment Debts and Related Matters*, the Commission examines three separate topics: the distribution of the proceeds realized from one or more of the enforcement remedies considered in Parts II, III, and IV; postjudgment arrest of a defaulting debtor; and the liability of sheriffs, creditors, and creditors' solicitors in the enforcement of judgment debts. Again, these areas have remained basically unchanged for a considerable period of time.

In chapter 2 of Part V, the Commission recommends the retention of a system of rateable distribution of enforcement proceeds, subject to certain justifiable priorities in favour of maintenance or support creditors and wage creditors, but not, however, in favour of the Crown. In chapter 3, the Commission proposes, as a general proposition, that postjudgment arrest should not be available for simple non-payment of a money judgment. However, it should continue to be available for non-payment of a maintenance or support order. In the case of such an order, the Commission recommends that, as an aspect of the court's contempt jurisdiction, the court should be empowered to order the arrest and imprisonment of a defaulting debtor who, although able to pay the judgment debt, refuses to do so. But such an order should be made only while no other practicable remedy for the enforcement of the debt is available. Finally, the Commission proposes that the court should be entitled to order the postjudgment arrest of any debtor who is about to abscond or who has dealt with his property to the prejudice of his creditors.

In chapter 4, the Commission attempts to clarify the murky legal position respecting the liability of sheriffs, and deals as well with the position concerning the duties and liability of creditors and their solicitors. With respect to the liability of sheriffs, the Commission basically recommends, among other things, that where the sheriff complies with the new statutory and regulatory provisions proposed in the Commission's Report, he should be protected from liability. Other recommendations delineate the duties of the sheriff in various circumstances, having regard to previous Commission proposals.

In addition, the Commission makes proposals protecting persons who obtain inaccurate information from the sheriff. For example, the Commission recommends that the class of claims that may be compensated by the new assurance fund proposed in Part III should include a claim by any person prejudiced by the actions of a sheriff in erroneously providing a clear certificate respecting writs on file at the sheriff's office.

With respect to the relationship between the sheriff and the creditor, or his solicitor, the Commission recommends that the sheriff should be precluded from requiring or accepting from any person an indemnification or any other similar agreement designed to save the sheriff harmless from liability in respect of his enforcement activities, except an agreement

covering all or part of the anticipated costs and expenses to be incurred by him in the enforcement of a judgment debt.

While the Commission generally recommends no change in the law governing the liability of creditors and their solicitors, it does recommend that the class of claims that may be compensated by means of the proposed new assurance fund should include claims by a plaintiff who is successful in an action arising out of a wrongful act by the sheriff and who, as a result of the financial status of the person held to be liable in that action, is unable to obtain full payment of the money judgment rendered in his favour against such person.

In the General Introduction to the Report, appearing in Part I, the Commission emphasized the deleterious effects of the present enforcement system on sheriffs, creditors, debtors, and others involved in the enforcement of judgment debts. The deficiencies of this system have been decried by many persons over the years and deserve a response. The thrust of our proposals has been to substitute for the existing miscellany of often frustrating and confusing rules a new enforcement regime designed to serve more effectively and fairly the people of Ontario.

(ii) Powers of Entry

The Commission has submitted to the Attorney General its *Report on Powers of Entry*. This Report includes a Draft Bill for a *Powers of Entry Act*. In its Report, the Commission considers powers to enter on land that are conferred on municipal and provincial officials by Ontario legislation, as well as the activities of such officials once an entry has been effected. The Report is also concerned with intrusive powers exercisable in relation to chattels, but does not embrace powers of entry granted to private individuals.

The Report begins by acknowledging that the power to enter on land without the consent of the occupier is a necessary consequence of supervisory and regulatory responsibilities undertaken by government in the public interest. Accordingly, the fundamental issue addressed by the Report is the manner in which the public interest in effective governmental regulation may be reconciled with the interest in individual privacy.

The Commission examines the existing law respecting the exercise of powers of entry. In its review, the Commission considers the common law background against which the legislative powers that are the subject of the Report have been enacted, as well as some features of existing statutory powers of entry, and the impact of the *Canadian Charter of Rights and Freedoms*.

As the Report points out, the subject of powers of entry and other intrusive powers has been considered by other law reform bodies.

Accordingly, the Report contains a discussion of the proposals of the Royal Commission Inquiry into Civil Rights in Ontario, the Manitoba Law Reform Commission, the Law Reform Commission of Australia, the Law Reform Commission of Western Australia, and the New Zealand Public and Administrative Law Reform Committee.

In chapter 3, the Report outlines the practice respecting powers of entry. The discussion is based on information gathered during interviews that were conducted with two groups: the recipients of the powers of entry, and representatives of organizations whose members were subject to the exercise of these powers. Interviews with the former group concerned such matters as the use of force in effecting entry, the production of identification, the giving of notice, and the degree of supervision of the exercise of powers of entry. Interviews with the latter group were directed to discovering whether there have been instances of abusive conduct in the exercise of these powers. The Commission concludes first, that public officials have taken the initiative in instituting measures designed to ensure individual privacy — for example, by requiring the presentation of identification — and secondly, that serious abuse resulting in controversy and public discussion has not occurred.

While the Commission finds no evidence of abusive behaviour in the exercise of powers of entry, it concludes that there is a potential for such abuse inherent in the breadth of the existing legislative powers and in the absence, in many cases, of external supervision of their exercise. Based on this conclusion, the Commission recommends the enactment of a new *Powers of Entry Act* that would establish certain mandatory minimum standards to govern the exercise by public officials of all powers of entry and all intrusive powers contained in statutes, regulations and by-laws in Ontario.

The proposed *Powers of Entry Act* comprises four elements. First, it sets out a code of minimum standards that must be followed by public officials in effecting entry on land and exercising intrusive powers in relation to chattels. Secondly, the Act addresses the circumstances in which force may be employed to effect an entry against the wishes of the person in possession of the place or thing in respect of which the power of entry is exercised. Thirdly, the Act creates a remedy for breach of its provisions or the provisions of any other Act, regulation, or by-law that apply to the entry, by establishing a civil action for damages. In addition, the Act provides that, in the case of a breach, a court, upon application, may make an order directing compliance with the Act or other relevant legislation, or may make such other order as it thinks fit. Finally, in order to facilitate the development of more detailed policies to govern the exercise of powers of entry, the proposed Act empowers the Lieutenant Governor in Council to make regulations respecting the manner in which powers of entry must be exercised and reported.

(b) PROJECTS IN PROCESS

(i) The Law of Trusts

During the past year, the Commission has given priority to the preparation of the *Report on the Law of Trusts* and the draft revised *Trustee Act*. Since work was resumed on the project last summer, substantial progress has been made; to date, three-quarters of the Report and Draft Bill have been approved by the Commission. The Commission has been ably assisted in this endeavour by the Project Director, Professor D.W.M. Waters, of the Faculty of Law, University of Victoria, and by L.R. MacTavish, Esq., Q.C., former Senior Legislative Counsel. The Commission anticipates that the Report and revised *Trustee Act* will be submitted to the Attorney General in the autumn of this year.

(ii) Administration of Estates of Deceased Persons

The past year has witnessed steady progress in the Administration of Estates of Deceased Persons Project. The objective of this project, which originally formed part of the Commission's Law of Trusts Project, is a new *Administration of Estates Act*. The proposed Act would bring together, in a revised form, portions of the *Trustee Act*, the *Estates Administration Act* (formerly *The Devolution of Estates Act*), the *Surrogate Courts Act* and Rules, and a number of common law doctrines dealing with estate administration. Work on the draft *Administration of Estates Act* is well under way and, following consideration of a number of outstanding issues, the writing of the draft final Report will commence.

The project is being directed by Professor George Alexandrowicz of the Faculty of Law, Queen's University. During the course of the project, the Commission has been fortunate to have the active and able assistance of an Advisory Committee of experts in estate administration, constituted under the chairmanship of Malcolm Archibald, Esq., Q.C.

(iii) The Hague Convention Concerning the International Administration of the Estates of Deceased Persons

The International Convention initially formed a separate Commission project. However, as the general question of the administration of estates of foreign decedents is being considered as part of the Administration of Estates of Deceased Persons Project, the Commission has decided to deal with the Convention, and the question whether it should be given effect in Ontario, in its *Report on the Administration of Estates of Deceased Persons*.

(iv) Basic Principles of Land Law

During the past year, the Commission resumed discussion of three

substantial research papers, dealing with reform of basic principles of land law, prepared during the course of the project. Unfortunately, with the receipt of the Reference on Human Artificial Insemination and Related Matters, it has been necessary to defer, once again, consideration of this important area of the law.

(v) The Law of Mortgages

The second stage of the three stage Law of Mortgages Project has been completed. During the second stage, nine research papers were prepared covering the following topics: (1) proper disclosure to borrowers and potential borrowers; (2) the mortgage as an ongoing relationship; and (3) mortgage remedies. These research papers and the recommendations of the Research Team have been considered by an Advisory Committee on the Law of Mortgages consisting of representatives of the legal profession, institutional lenders and consumer groups. The Advisory Committee was established by the Commission under the chairmanship of the Project Director, Barry J. Reiter, Esq.

Early in 1983, the Commission considered a Research Report prepared by the Project Director, containing general recommendations for reform of the law of mortgages. These recommendations were based, in turn, upon the recommendations of the Research Team and the comments and views expressed by members of the Advisory Committee. On the basis of the Project Director's Research Report, the Commission tentatively approved general directions for reform.

Work has begun on the third and final stage of the Law of Mortgages Project, which will consider the way in which the general directions for reform tentatively approved by the Commission can best be effected. Specific recommendations for reform of the law of mortgages will be considered early in 1984.

(vi) Time Sharing

In October, 1982, the Commission added to its programme a Project on Time Sharing. Time sharing occurs where a number of persons own, or have the exclusive right to use, a piece of property for a specified period of time. The project will examine all aspects of the present law governing time sharing in Ontario and other jurisdictions, with a view to ascertaining whether there is a need in Ontario for enabling and regulatory legislation. In order to obtain the benefit of the experience of those concerned with the operation of this area of the law, the Commission has invited the submission of briefs.

In the late fall of 1982, a member of the Commission's legal staff attended two conferences on time sharing. These conferences, which were

held in Houston, Texas and Calgary, Alberta, provided the Commission with an opportunity to obtain valuable information concerning the law of time sharing and to meet a number of persons distinguished in the time share field, including lawyers, government officials, and representatives from private industry and from the Resort Timeshare Council of Canada and the National TimeSharing Council of the American Land Development Association. The Commission has been most fortunate to have had the support and assistance of these persons during the preliminary stage of the project, and we wish to extend to them our sincere thanks and appreciation.

The Time Share Project will be conducted in two stages. In the first stage, a comprehensive working paper will be prepared by a member of the internal legal staff, which will include a discussion of the following topics: the concept and forms of time sharing; the present law in Ontario and in order jurisdictions; problem areas in the law; and alternative proposals for reform. It is anticipated that the first stage of the project will be completed by the autumn of 1983.

In the second stage, the proposals and materials produced during the first stage will be evaluated by an Advisory Committee, which will include members of the legal profession, government officials, and other knowledgeable interested parties. It is expected that this stage of the project will be completed during the coming year. Thereafter, the working paper, together with the views of the Advisory Committee, will be submitted to the Commission for consideration.

(vii) Law of Contract Amendment

During the year under review, the Commission was able to devote a considerable amount of attention to this project. Among the issues examined were the following: the doctrine of unconscionability; the doctrine of good faith; illegal contracts; minors' contracts; contractual capacity; penalty clauses and relief from forfeiture of monies paid; waiver of conditions; and contractual remedies.

It is expected that, in the coming year, the Commission will complete its consideration of the remaining topics — misrepresentation and the doctrines of mistake and frustration — and will commence preparation of its final Report.

As in the past, we continue to be well served by the joint Project Directors, Professors Jacob S. Ziegel and Stephen M. Waddams, both of the Faculty of Law, University of Toronto.

(viii) The Law of Standing

The Law of Standing Project involves an examination of the question

whether the law governing the right of a private individual to commence an action in respect of public rights should be broadened. Unfortunately, during the past year, little progress was made on the project. Because of the need to complete several projects that predate the Law of Standing Project, it was decided to defer consideration of the many important issues raised in a research paper on standing previously prepared for the Commission. It is hoped to resume study of the law of standing as soon as time and personnel permit.

(ix) Contribution Among Wrongdoers

This project, directed by Professor John M. Evans of Osgoode Hall Law School, York University, is concerned with the law governing the allocation of responsibility for loss where the same injury is caused by the conduct of two or more persons, and with contributory negligence, a topic that also involves apportionment of loss. During the past year, the Commission considered a research paper dealing with contributory negligence, prepared by Professor J.B. Dunlop, of the Faculty of Law, University of Toronto. In addition, work commenced on the preparation of the draft final Report. Due to other commitments, it will not be possible to consider the draft Report until the spring of 1984. At that time, it will be necessary also to prepare draft legislation embodying the Commission's recommendations.

(x) Remedies for Wrongful Intentional Interference with Goods

In our last Annual Report, we announced the addition of this project to the Commission's programme. As we stated, the project will be conducted in two stages.

The first stage of the project — the research study — has been completed under the able direction of the joint Project Directors, Professor George R. Stewart of the Faculty of Law, University of Windsor, and Professor Ralph L. Simmonds of the Faculty of Law, McGill University. Research papers have been prepared on the following topics:

- (1) specific relief remedies, including replevin, detinue, injunctions, and declarations;
- (2) self-help remedies, including recaption of chattels and contractual rights;
- (3) damage remedies, including trespass, conversion, and interference with a reversionary interest;
- (4) analogous remedies in the civil law, based on a consideration of the law of Quebec, France, and Germany; and
- (5) an empirical study of the incidence of the remedies and the patterns of preference, based on court records, a survey of sheriffs' offices,

and data provided by consumer and credit organizations and sales and financial institutions.

The second stage of the project will involve an evaluation by an Advisory Board of the proposals and materials produced during the first stage. In consultation with the joint Project Directors, the Advisory Board has been appointed by the Commission. The Board is composed of persons who possess expert knowledge of the law and practice relating to the subject matter of the project, and we most sincerely appreciate their willingness to assist the Commission in this way.

It is expected that the second stage of the project will be completed during the summer of 1983, and that a Research Report will be submitted to the Commission during the coming autumn.

FUTURE PROGRAMME

As in the past, the Commission was obliged during the period under review to reassess its priorities and to defer important projects in the hope of bringing to completion other projects of long standing. While the Reference on Human Artificial Insemination and Related Matters will occupy a large portion of our time and resources during the coming year, we shall do all within our power to maintain progress in our other important projects and to return to those that have been deferred at the earliest opportunity.

GENERAL ACTIVITIES

For law reform to be meaningful, it is necessary to maintain communication with the practising members of the legal profession. In this way, members can be informed of the Commission's research and, in turn, the Commission can receive their comments and advice. In particular, the Commission is concerned to elicit suggestions for reform of the law from members of the practising Bar. Accordingly, the Chairman welcomed the opportunity to speak of the work of the Commission at meetings of the following county and district law associations: the Frontenac County Law Association; the Nipissing District Law Association; and the Northumberland County Law Association. So, too, the Chairman addressed a meeting of the Officers and Trustees of the Carleton County Law Association, and of the Directors of The Advocates' Society. We very much appreciate the efforts of those involved in making these visits both successful and enjoyable.

The Chairman and Counsel, on behalf of the Commission, attended a meeting of the Canadian Law Reform Agencies at Montebello, Quebec, in August, 1982. This meeting provided an opportunity to strengthen ties with these agencies, and to exchange information with their representatives.

Immediately following the meeting, the Chairman and Vice Chairman represented the Commission at the Sixty-fourth Annual Meeting of the Uniform Law Conference of Canada, which was also held at Montebello. We would mention that, as in its *Report on Sale of Goods*, the Commission recommended, in its *Report on Products Liability*, that the Uniform Law Conference of Canada should be asked to explore the possibility of a *Uniform Products Liability Act*. This issue was discussed by the Conference on several occasions, and, during the 1982 meeting, the matter was referred to the Ontario and Manitoba Commissioners — and to any other jurisdiction that wished to participate — to report in 1983. Since this meeting, the Chairman and Vice Chairman have engaged in preparatory matters relating to the Committee.

In the year under review, the Chairman was called upon to represent the Commission on many occasions. These included an address to the members of the staff of the Ontario Police College concerning the function and purpose of the Ontario Law Reform Commission, and a meeting with the Ontario Branch, Canadian Bar Association Committee on Law Reform and Legislation. Further, the Chairman attended Council Meetings of the Canadian Bar Association-Ontario, and was the moderator of a panel organized by the Canadian Student Pugwash, University of Toronto, co-sponsored by the Medical Students' Society, entitled "Surrogate Motherhood: Shaping Public Policy for Ontario".

As in past years, we have been pleased to receive colleagues from other Canadian law reform agencies, including W.H. Hurlburt, Esq., Q.C., Director, The Institute of Law Research and Reform, Alberta, and Professor Clifford H.C. Edwards, Q.C., Chairman, Law Reform Commission, Manitoba. We were also pleased to welcome to our offices Professor Stephen M. Cretney, Commissioner, The Law Commission, England; A.S. Hodge, Esq., Secretary, The Law Reform Commission of Hong Kong; and Professor Patrick M. Schultz, of Université de Lille III, Paris.

ACKNOWLEDGMENTS

Attached to this Report are three Appendices relating to the activities of the Commission. Appendix A sets out a formal change in the membership of the Commission during the past year. Appendix B consists of a list of Reports prepared and submitted by the Commission since its inception in 1964, together with a table indicating the extent to which legislation concerning its proposals has been enacted.

Appendix C to the Report contains a list of the officers and permanent staff of the Commission. The Commission regrets the departure during the past year of its Administrative Assistant, Mrs. J.A. Brown. To Mrs. Brown we extend our sincere thanks and best wishes for success in the future. The

position of Administrative Assistant was filled by Mrs. Beverley Woodley, formerly Secretary to the Commission's Administrative Officer, and for many years a valued member of the administrative staff. To Miss A.F. Chute, our Administrative Officer, and to all members of the administrative staff, we wish to express our deep appreciation of their efforts on our behalf.

May we also express our sincere thanks and appreciation to you, Mr. Attorney, and to the officers of your Ministry, for the interest and assistance afforded the Commission in its endeavours.

All of which is respectfully submitted.



Derek Mendes da Costa
Chairman



H. Allan Leal
Vice Chairman



Richard A. Bell
Commissioner



William R. Poole
Commissioner



Barry A. Percival
Commissioner

March 31, 1983

APPENDIX A

Extract from the Minutes of the Ontario Law Reform Commission,
July 6, 1982.

The following resolution, presented by the Honourable R.A. Bell, P.C., Q.C., and seconded by H. Allan Leal, Q.C., LL.M., LL.D., D.C.L., was passed by unanimous vote:

When he retired as Vice-Chairman in 1977, the Commission endeavoured to present by resolution its assessment of the career of the Honourable James Chalmers McRuer as a jurist and a law reformer, and we venture to repeat it:

‘On the occasion of the retirement of the Honourable James Chalmers McRuer, O.C., LL.D., as Vice-Chairman, the members of the Ontario Law Reform Commission wish formally to record their deep sense of obligation to him for his unparalleled service to the cause of law reform.

His encyclopedic knowledge of law and social philosophy, his scholarly wisdom, his persistent and tenacious search for truth, his unswerving dedication to the betterment of life for his fellow citizens, his incredibly youthful outlook and vigour, are qualities which have earned him a unique place in the legal history of our Province and among reformers throughout the common law world.

Those who have been privileged to be his colleagues for more than 12 years on the Ontario Law Reform Commission pay him this humble and respectful tribute.’

Mr. McRuer remained as a part-time member of the Commission to assist in the completion of the Projects on the Law of Trusts and the Enforcement of Judgment Debts and Related Matters, and his help has been of the same superlative quality for which he is noted.

On June 1, 1982, he submitted his final resignation to the Premier of Ontario and, to our deep regret, he will no longer be associated with this Commission, of which he was the first Chairman and for which he set the style.

The Commission acknowledges once again its indebtedness to the qualities of the great gentleman it knows as ‘Jim McRuer’. We recognize that, in addition to his work as a great jurist, whose numerous reported decisions refresh the common law, and to his unexcelled and original work as a law reformer, he was the Chairman of the Royal Commission Inquiry into Civil Rights, the Report of which has led to such innovative statutes as the Statutory Powers

Procedure Act and the Judicial Review Procedure Act, which were original in Ontario and which have been emulated in many common law jurisdictions.

We end on a personal note. Our former colleague is about to attain the age of 92 years. Many of his greatest contributions to jurisprudence in the common law world have been made in the eighteen years since he resigned from the position of Chief Justice of the High Court of Ontario at the age of 74 years. Intellectual brilliance and achievement, he has proved, are not restricted by age.

He cannot expect to emulate Methuselah, but his colleagues wish him the opportunity to make the late Sir William Mulock appear like a youngster and to a long continuance of his present physical and intellectual vigour.

APPENDIX B
REPORTS OF THE ONTARIO LAW REFORM COMMISSION

	Title	Date of Report	Original Legislation Concerning Commission Proposals
1.	Report No. 1 [The Rule Against Perpetuities]	February 1, 1965	<i>The Perpetuities Act, 1966, S.O., 1966, c. 113</i>
2.	Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	March 1, 1966	<i>do.</i>
3.	Report No. 2 [The Wages Act: Assignment of Wages]	March 3, 1965	<i>The Wages Amendment Act, 1968, S.O. 1968, c. 142</i>
4.	Report No. 3 on Personal Property Security Legislation	May 28, 1965	<i>The Personal Property Security Act, 1967, S.O. 1967, c. 72</i>
5.	Report No. 3A on Personal Property Security Legislation	May 18, 1966	<i>do.</i>
6.	Report on The Evidence Act: Admissibility of Business Records	February 16, 1966	<i>The Evidence Amendment Act, 1966, S.O. 1966, c. 51, s. 1</i>
7.	Report on The Mechanics' Lien Act	February 22, 1966	<i>The Mechanics' Lien Act, 1968-69, S.O. 1968-69, c. 65</i>
8.	Supplementary Report on The Mechanics' Lien Act	May 26, 1967	<i>do.</i>
9.	Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	See <i>The Mechanics' Lien Amendment Act, 1975, S.O. 1975, c. 43</i> <i>The Ministry of Transportation and Communications Creditors Payment Act, 1975, S.O. 1975, c. 44</i> <i>The Public Works Creditors Payment Repeal Act, 1975, S.O. 1975, c. 45</i>
10.	Report on The Execution Act: Exemption of Goods from Seizure	December 9, 1966	<i>The Execution Amendment Act, 1967, S.O. 1967, c. 26</i>

	Title	Date of Report	Original Legislation Concerning Commission Proposals
11.	Report on The Law of Condominium	March 6, 1967	<i>The Condominium Act, 1967, S.O. 1967, c. 13</i>
12.	Report on the Basis for Compensation on Expropriation	September 21, 1967	<i>The Expropriations Act, 1968-69, S.O. 1968-69, c. 36</i>
13.	Report on the Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	<i>The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968, S.O. 1968, c. 120</i>
14.	Annual Report 1967	January 15, 1968	Not applicable
15.	Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	January 19, 1968	<i>Divorce Act, S.C. 1967-68, c. 24, s. 26</i>
16.	Report on the Proposed Adoption in Ontario of The Uniform Wills Act	February 5, 1968	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40</i> <i>See The Registry Amendment Act, 1978, S.O. 1978, c. 8, s. 1</i>
17.	Report on The Protection of Privacy in Ontario	September 10, 1968	<i>See The Consumer Reporting Act, 1973, S.O. 1973, c. 97</i>
18.	Report on Section 183 of The Insurance Act	October 3, 1968	—
19.	Report on Trade Sale of New Houses	October 4, 1968	<i>See The Ontario New Home Warranties Plan Act, 1976, S.O. 1976, c. 52</i>
20.	Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	<i>The Landlord and Tenant Amendment Act, 1968-69, S.O. 1968-69, c. 58</i>

	Title	Date of Report	Original Legislation Concerning Commission Proposals
21.	Report on Limitation of Actions	February 3, 1969	See <i>The Highway Traffic Amendment Act (No. 2)</i> , 1975, S.O. 1975, c. 37 <i>The Fatal Accidents Amendment Act</i> , 1975, S.O. 1975, c. 38 <i>The Trustee Amendment Act</i> , 1975, S.O. 1975, c. 39
22.	Annual Report 1968	April 7, 1969	Not applicable
23.	Report on the Age of Majority and Related Matters	June 3, 1969	<i>The Age of Majority and Accountability Act</i> , 1971, S.O. 1971, c. 98
24.	Report on the Status of Adopted Children	June 3, 1969	<i>The Child Welfare Amendment Act</i> , 1970, S.O. 1970, c. 96, s. 23
25.	Report on Family Law, Part I: Torts	November 4, 1969	<i>The Family Law Reform Act</i> , 1978, S.O. 1978, c. 2 (partial implementation)
26.	Report on Section 20 of The Mortgages Act	March 12, 1970	<i>The Mortgages Amendment Act</i> , 1970, S.O. 1970, c. 54, s. 1
27.	Report on Family Law, Part II: Marriage	April 6, 1970	<i>The Civil Rights Statute Law Amendment Act</i> , 1971, S.O. 1971, c. 50, s. 55 (partial implementation) <i>The Marriage Act</i> , 1977, S.O. 1977, c. 42
28.	Annual Report 1969	April 20, 1970	Not applicable
29.	Report on Actions Against Representatives of Deceased Persons	November 30, 1970	<i>The Trustee Amendment Act</i> , 1971, S.O. 1971, c. 32, s. 2
30.	Report on the Coroner System in Ontario	January 25, 1971	<i>The Coroners Act</i> , 1972, S.O. 1972, c. 98

	Title	Date of Report	Original Legislation Concerning Commission Proposals
31.	Report on Sunday Observance Legislation	February 26, 1971	<i>The Retail Business Holidays Act, 1975, S.O. 1975 (2nd Session), c. 9</i>
32.	Report on Land Registration	March 23, 1971	<i>The Assessment Amendment Act, 1972, S.O. 1972, c. 125, s. 2</i> <i>The Retail Sales Tax Amendment Act, 1975, S.O. 1975, c. 9, s. 7</i> <i>The Motor Vehicle Fuel Tax Amendment Act, 1975, S.O. 1975, c. 10, s. 5</i> <i>The Tobacco Tax Amendment Act, 1979, S.O. 1979, c. 17, s. 4</i> <i>The Corporations Tax Amendment Act (No. 2), 1979, S.O. 1979, c. 89</i>
33.	Annual Report 1970	March 31, 1971	Not applicable
34.	Report on The Change of Name Act	May 31, 1971	<i>The Change of Name Amendment Act, 1972, S.O. 1972, c. 44</i>
35.	Report on The Mortgages Act, Section 16	June 18, 1971	—
36.	Report on Development Control	September 28, 1971	<i>The Planning Amendment Act, 1973, S.O. 1973, c. 168, s. 10</i>
37.	Report on Powers of Attorney	January 11, 1972	<i>The Powers of Attorney Act, 1979, S.O. 1979, c. 107</i>
38.	Report on Occupiers' Liability	January 11, 1972	<i>The Occupiers' Liability Act, 1980, S.O. 1980, c. 14</i>
39.	Report on Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
40.	Report on Review of Part IV of The Landlord and Tenant Act	March 31, 1972	<i>The Landlord and Tenant Amendment Act, 1972, S.O. 1972, c. 123</i>

	Title	Date of Report	Original Legislation Concerning Commission Proposals
41.	Annual Report 1971	March 31, 1972	Not applicable
42.	Report on the Non-Possessory Repairman's Lien	October 4, 1972	—
43.	Report on the Administration of Ontario Courts, Part I	February 26, 1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i> <i>The Judicature Amendment Act (No. 2), 1977, S.O. 1977, c. 51, s. 9</i>
44.	Annual Report 1972	March 31, 1973	Not applicable
45.	Report on the Administration of Ontario Courts, Part II	May 23, 1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>
46.	Report on Family Law, Part III: Children	September 25, 1973	<i>The Child Welfare Amendment Act, 1975, S.O. 1975, c. 1 (partial implementation)</i> <i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i> <i>The Children's Law Reform Act, 1977, S.O. 1977, c. 41 (partial implementation)</i> See <i>Children's Law Reform Amendment Act, 1982, S.O. 1982, c. 20</i>
47.	Report on The Solicitors Act	September 28, 1973	—
48.	Report on Motor Vehicle Accident Compensation	November 6, 1973	—
49.	Report on the Administration of Ontario Courts, Part III	December 17, 1973	<i>The Judicature Amendment Act, 1975, S.O. 1975, c. 30 (partial implementation)</i> See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>

	Title	Date of Report	Original Legislation Concerning Commission Proposals
50.	Report on Family Law, Part IV: Family Property Law	February 8, 1974	<p><i>The Small Claims Courts Amendment Act, 1977, S.O. 1977, c. 52 (partial implementation)</i></p> <p><i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i></p> <p><i>The Family Law Reform Act, 1978, S.O. 1978, c. 2 (partial implementation)</i></p> <p>See <i>The Land Titles Amendment Act, 1978, S.O. 1978, c. 7</i></p> <p><i>The Registry Amendment Act, 1978, S.O. 1978, c. 8</i></p>
51.	Report on Family Law, Part V: Family Courts	February 8, 1974	<p>See <i>The Unified Family Court Act, 1976, S.O. 1976, c. 85</i></p> <p><i>The Children's Probation Act, 1978, S.O. 1978, c. 41 (partial implementation)</i></p>
52.	Annual Report 1973	May 6, 1974	Not applicable
53.	Report on the International Convention Providing a Uniform Law on the Form of the International Will	July 3, 1974	<p><i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40, s. 42</i></p>
54.	Annual Report 1974	March 31, 1975	Not applicable
55.	Report on Family Law, Part VI: Support Obligations	April 18, 1975	<p><i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i></p> <p><i>The Family Law Reform Act, 1978, S.O. 1978, c. 2</i></p>
56.	Report on Mortmain, Charitable Uses and Religious Institutions	February 27, 1976	<p><i>The Religious Organizations' Lands Act, 1979, S.O. 1979, c. 45</i></p>

Title		Date of Report	Original Legislation Concerning Commission Proposals
			<i>The Anglican Church of Canada Act, 1979, S.O. 1979, c. 46</i>
			<i>The Registry Amendment Act, 1979, S.O. 1979, c. 94, s. 17</i>
			<i>Charities Accounting Amendment Act, 1982, S.O. 1982, c. 11</i>
			<i>Mortmain and Charitable Uses Repeal Act, 1982, S.O. 1982, c. 12, s. 1(1)</i>
57.	Report on Landlord and Tenant Law	March 15, 1976	<i>The Residential Tenancies Act, 1979, S.O. 1979, c. 78 (partial implementation)</i>
58.	Report on the Law of Evidence	March 29, 1976	—
59.	Annual Report 1975	March 31, 1976	Not applicable
60.	Report on Changes of Name	August 16, 1976	<i>The Vital Statistics Amendment Act, 1978, S.O. 1978, c. 81, s. 1 (partial implementation)</i>
61.	Report on the Impact of Divorce on Existing Wills	February 28, 1977	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40, s. 17(2)</i>
62.	Annual Report 1976	March 31, 1977	Not applicable
63.	Annual Report 1977	March 31, 1978	Not applicable
64.	Report on Sale of Goods	March 30, 1979	—
65.	Annual Report 1978	March 30, 1979	Not applicable
66.	Report on Products Liability	November 16, 1979	—
67.	Annual Report 1979	March 31, 1980	Not applicable
68.	Report on the Enforcement of Judgment Debts and Related Matters, Part I	February 20, 1981	—
69.	Report on the Enforcement of Judgment Debts and Related Matters, Part II	March 31, 1981	—

	Title	Date of Report	Original Legislation Concerning Commission Proposals
70.	Report on the Enforcement of Judgment Debts and Related Matters, Part III	March 31, 1981	—
71.	Annual Report 1980-81	March 31, 1981	Not applicable
72.	Report on Witnesses Before Legislative Committees	September 11, 1981	—
73.	Report on Class Actions	March 31, 1982	—
74.	Annual Report 1981-82	March 31, 1982	Not applicable
75.	Report on the Enforcement of Judgment Debts and Related Matters, Part IV	March 31, 1983	—
76.	Report on the Enforcement of Judgment Debts and Related Matters, Part V	March 31, 1983	—
77.	Report on Powers of Entry	March 31, 1983	—

Many of the Commission's earlier reports are no longer in print. Those that are still in print may be ordered from Publications Services, Ministry of Government Services, 5th Floor, 880 Bay Street, Toronto, Ontario, Canada M7A 1N8. Telephone 965-6015. Toll free long distance 1-800-268-7540; in area code 807, 0-Zenith 67200.

APPENDIX C

OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

Chairman	Derek Mendes da Costa, Q.C., LL.M., S.J.D., LL.D.
Vice Chairman	H. Allan Leal, Q.C., LL.M., LL.D., D.C.L.
Commissioners	Honourable Richard A. Bell, P.C., Q.C. William R. Poole, Q.C. Barry A. Percival, Q.C.
Counsel	M. Patricia Richardson, M.A., LL.B.
Secretary and Administrative Officer	Miss A.F. Chute
Senior Legal Research Officer	M.A. Springman, M.A., M.Sc., LL.B.
Legal Research Officers	Eric Gertner, LL.B., B.C.L. (Oxon) Ann M. Merritt, B.A., LL.B. Larry M. Fox, LL.B. Pamela M. Gibson, B.A., LL.B.
Administrative Assistant	Mrs. B.G. Woodley
Secretary to Chairman	Mrs. Stephanie Hlynka
Secretary to Vice Chairman	Elizabeth Page
Secretary to Counsel	Mrs. D.M. Halyburton
Secretary to Administrative Officer	
Secretaries to Legal Research Officers	Mrs. Cora Calixterio Ms. V. Van Asperen, B.Sc.
Receptionist	Miss Mary M. O'Hara



SEVENTEENTH ANNUAL REPORT

1983-84

ONTARIO LAW REFORM COMMISSION

C22N
A51
- A56



Ministry of the
Attorney
General

SEVENTEENTH ANNUAL REPORT

1983-84

ONTARIO LAW REFORM COMMISSION



Ministry of the
Attorney
General

The Ontario Law Reform Commission was established by section 1 of the *Ontario Law Reform Commission Act*. Section 2(1) of the Act states that it is the function of the Commission to inquire into and consider any matter relating to (a) reform of the law having regard to the statute law, the common law and judicial decisions; (b) the administration of justice; (c) judicial and quasi-judicial procedures under any Act; and (d) any subject referred to it by the Attorney General. The Commissioners are:

DEREK MENDES DA COSTA, Q.C., LL.M., S.J.D., LL.D., *Chairman*

H. ALLAN LEAL, O.C., Q.C., LL.M., LL.D., D.C.L., *Vice Chairman*

HONOURABLE RICHARD A. BELL, P.C., Q.C.

WILLIAM R. POOLE, Q.C.

BARRY A. PERCIVAL, Q.C.

M. Patricia Richardson, M.A., LL.B., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are located on the Fifteenth Floor at 18 King Street East, Toronto, Ontario, Canada M5C 1C5.

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Ontario
Law Reform
Commission

To The Honourable R. Roy McMurtry, Q.C.
Attorney General for Ontario

Dear Mr. Attorney:

We have the honour to present the Seventeenth Annual Report of the Ontario Law Reform Commission, for the period April 1, 1983 to March 31, 1984.

INTRODUCTION

This Report embraces the work of the Ontario Law Reform Commission during the period April 1, 1983 to March 31, 1984. It was a year of intense activity over the broad spectrum of its programme and a year of no small measure of fulfilment.

At the close of the year, the Commission submitted to the Attorney General a major *Report on the Law of Trusts*, including a proposed Draft Bill to revise the *Trustee Act*.

With the submission of this Report, the Commission completes another substantial portion of its initial undertaking to review the whole of the law of property in this jurisdiction. The review of the law of trusts was begun some years ago, but circumstances from time to time necessitated that work on the project be interrupted to enable our resources to be applied to other urgent matters. It is with a sense of satisfaction that time and circumstances have now allowed us to bring this important project to fruition.

Whilst work continues apace on our remaining projects, we continue to solicit suggestions for additions to our future programme. In this respect, the Commission appreciates suggestions made in the past by members of the judiciary, the legal profession and the general public. We are encouraged by this manifestation of interest in our work and wish to extend our thanks to all those who have assisted us in this way.

It is with great pleasure that the Commission records that, on December 24, 1983, our Vice Chairman, H. Allan Leal, Q.C., LL.D., D.C.L., was appointed an Officer of the Order of Canada.

THE PROGRAMME: REFERRED MATTERS

Section 2(1) (d) of the *Ontario Law Reform Commission Act* requires the Commission to inquire into and to consider any matter relating to any subject referred to it by the Attorney General. No new matters were referred to the Commission during the period covered by this Report. During the year, work on a prior Reference, the Project on Human Artificial Insemination and Related Matters, continued.

PROJECTS IN PROCESS

Human Artificial Insemination and Related Matters

On November 5, 1982, the Commission received a Reference from the Attorney General to inquire into and consider the legal issues relating to the practice of human artificial insemination, including "surrogate mothering" and transplantation of fertilized ova to a third party. To be included within the scope of the Commission's Report were such topics as: the legal status and legal rights of children conceived artificially, of their biological parents, and of the spouses of each biological parent; the nature and enforceability of agreements relating to artificial conception practices, including agreements respecting custody of a child; and the legal rights and liabilities of health care personnel engaged in artificial conception practices. The full list of topics appears in the Commission's *Sixteenth Annual Report 1982-1983*, at page 8. In dealing with these and other matters, the importance of considering the best interests of the children was particularly emphasized.

In view of the multidisciplinary nature of the project, an Advisory Board, comprising members of the judiciary and of the professions of law, medicine and social work and the disciplines of philosophy and ethics, was appointed to assist the Commission. The Board met on a number of occasions to discuss research papers prepared by the Project Consultant, Professor Bernard M. Dickens of the Faculty of Law, University of Toronto. In addition, Professor Dickens and representatives of the Commission met with artificial insemination and *in vitro* fertilization specialists. Under the auspices of the Commission, a questionnaire was sent to the Ontario practitioners whose names are listed in the Directory of The Canadian Fertility and Andrology Society. An analysis of the responses to this questionnaire is in the course of preparation. Finally, the Commission has conducted an evaluation of the briefs submitted to it in response to announcements published in daily newspapers and the Ontario Reports and circulated to interested persons and groups in the Province.

The Commission has considered several research reports and papers prepared by Professor Dickens and members of the Commission's legal staff. On the basis of this material, the Commission has made tentative decisions concerning recommendations for reform. Work has now commenced on the preparation of the Commission's final Report embodying these proposals.

One facet of this project has been an examination of so-called wrongful life, wrongful birth, wrongful conception or pregnancy, and dissatisfied life actions. Wrongful life actions are those brought by a mentally or physically impaired child, where it is alleged that, but for the wrongful act of the defendant, the child would not have been conceived or, if already conceived, would not have been born alive. A wrongful birth suit is one in which one or both parents make a similar allegation arising from the same circumstances. For example, a physician may negligently fail to diagnose rubella in a woman seeking artificial insemination. Based on the physician's diagnosis, the woman may be inseminated. The result may be a

child born with congenital rubella — a child who, but for the negligence of the physician, would not have been conceived.

Actions described as wrongful conception or wrongful pregnancy arise where a child is born subsequent to a negligently performed sterilization or abortion that has failed. Finally, in a dissatisfied life case, it is alleged that the wrongful conduct of the defendant has resulted in the conception and birth of a medically normal child into conditions of social, psychological, economic or other related disadvantage.

Initially, these actions were viewed from the perspective of the artificial conception technologies. However, it has become apparent that a wider focus is necessary and desirable, since the circumstances giving rise to such actions are not restricted to the use of artificial conception. Accordingly, the Commission has decided to examine the law in this area in a separate project devoted exclusively to wrongful life and other related causes of action.

THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

Under its founding statute, the Commission may inquire into and consider any matter relating to reform of the law.

(a) COMPLETED PROJECTS

The Law of Trusts

During the past year, the Commission completed its examination of the law of trusts in Ontario. The *Report on the Law of Trusts*, consisting of two volumes and containing a Draft Bill for a revised *Trustee Act*, was submitted to the Attorney General on March 30, 1984.

The Law of Trusts Project was commenced some years ago as part of the Commission's undertaking to review the whole of the law of property in Ontario. During the early stages of the project, a complete codification of the law of trusts was rejected in favour of the continuation in Ontario of the tradition of enabling and supportive trustee legislation; accordingly, the Report recommends that the revised *Trustee Act* should continue to assist and supplement the judge-made law of trusts and to confer powers on the courts and upon trustees, subject to the contrary intention of the creator of the trust. The existing *Trustee Act* should, however, be modernized and improved in order to bring it into line with contemporary needs and practice, and the revised Act should clarify or amend the law where necessary or advantageous. The revised *Trustee Act* is not intended to apply to business, commercial or investment trusts.

Chapter 2 of the Report deals with the fundamental duties of trustees. It is proposed that trustees' duties of care and impartiality and their duties

with respect to delegation and the avoidance of conflict of interest and duty be clarified and placed in statutory form. For example, with respect to the duty of care, it is recommended that the revised *Trustee Act* should state expressly that, in the discharge of their duties and the exercise of their powers, trustees shall exercise that degree of care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person. It is also recommended that “professional” trustees — that is, trustees who in fact possess or who because of their profession, business or calling ought to possess a particular knowledge or skill relevant to the administration of the trust — should be subject to a higher duty of care than “non-professional” trustees.

The Report also deals extensively with the powers of trustees. The law governing both the judicial and non-judicial appointment and discharge of trustees is reviewed, and an improved mechanism for non-judicial appointment and discharge is recommended. The Commission makes additional recommendations designed to encourage resort to the non-judicial power, as well as recommendations with respect to vesting orders and the protection of third parties dealing with trustees.

With respect to administrative powers, the revised Act bestows upon trustees, except so far as modified or excluded by the trust instrument, an updated and expanded set of administrative powers that are customary in well drawn contemporary trust instruments in Ontario. The Report deals at some length with the power of investment, and recommends that sections 26 and 27 of the existing *Trustee Act*, containing the “legal list” of authorized trustee investments, be repealed. In the Commission’s view, trustees should be able to invest in any type of property, subject to the fundamental duty of care proposed for inclusion in the revised Act. Accordingly, trustees, in investing trust property, would be required to exercise that degree of care, diligence and skill that a person of ordinary prudence would exercise in investing the property of another person. In order to give guidance to trustees, the revised Act contains a non-exhaustive list of factors that trustees may wish to consider in exercising the statutory power of investment.

The Report addresses the difficulties encountered by trustees in attempting to allocate receipts and outgoings between income and capital beneficiaries. The revised Act proposed by the Commission contains a number of provisions designed to assist trustees in this respect, including a facultative discretionary trust provision and a facultative percentage trust provision. The Act also imposes upon trustees a duty to act impartially as between income and capital beneficiaries with respect to each item of trust property. Unless the trust instrument expressly states to the contrary, this duty applies to all types of property — personalty and realty — and whether the property is an original or subsequently acquired asset of the trust. The duty of impartiality also applies in respect of all types of disposition — testamentary and *inter vivos* — and whether the property is authorized or unauthorized as a trustee investment.

Dispositive powers of trustees are also canvassed by the Report. Express statutory powers of maintenance and advancement are recom-

mended. In addition, the device of the protective trust is examined. The Report recommends that, while settlors and testators should not be precluded from including provisions for protective trusts in trust instruments, creditors should have a right to apply to the court to reach the interest of the protected beneficiary.

Another matter addressed by the Report is remuneration of trustees and, in particular, the taking of interim compensation. The Report proposes that, subject to several specific recommendations designed to prevent abuse, trustees should be permitted, from time to time during the administration of the trust, to pay to themselves from the assets of the trust such sum as, in their opinion, is fair and reasonable compensation for their work and time spent on the trust during the period of time to which the payment relates.

The Report contains a chapter dealing with contribution and indemnity among trustees. It is recommended that the present law governing contribution and indemnity among trustees be abolished, and that, in its place, the revised *Trustee Act* should authorize the court to order contribution or indemnity among co-trustees in such amount as the court considers just and equitable having regard to the extent of the responsibility of each trustee in breach for the loss caused.

The Report also contains a number of recommendations concerning the variation and termination of trusts. The Commission recommends that the present *Variation of Trusts Act* should be repealed and its provisions incorporated in the revised *Trustee Act*, but in an amended and expanded form. In addition, the Commission recommends that the rule known as the rule in *Saunders v. Vautier* should be severely limited in its field of operation. Subject to certain exceptions, a trust could not be varied or terminated before the natural ending of the trust without the approval of the court. However, the proposed general prohibition against variation and premature termination of trusts without the court's consent would not apply, *inter alia*, to resulting or constructive trusts, or, as indicated previously, to business, commercial or investment trusts, or where a trust instrument contains a power whereby one or more persons who are able and willing to act may vary or terminate the trust or any of its terms.

A final chapter of the Report deals with the variation and reorganization of charitable trusts, and the salvaging of imperfect trust provisions.

(b) PROJECTS IN PROCESS

(i) Administration of Estates of Deceased Persons

The Commission's review of the law governing the administration of estates of deceased persons was originally undertaken as part of its study of the law of trusts. Now a separate project, the study has involved the preparation of nine research papers and a number of Director's Research Reports containing recommendations for reform of the law. The objective

of the project is a new *Administration of Estates Act*, which would bring together and revise relevant portions of the *Trustee Act*, the *Estates Administration Act* (formerly *The Devolution of Estates Act*) and the provisions governing practice under the *Surrogate Courts Act* and Rules. The new Act would also codify and revise a number of common law doctrines that now govern estate administration.

During the last year, the final two Director's Research Reports were considered by the Commission, and virtually all policy issues have now been decided. In addition, work proceeded on the draft *Administration of Estates Act*, and the writing of the Commission's final Report was commenced.

The Project Director is Professor George W. Alexandrowicz of the Faculty of Law, Queen's University. In formulating its recommendations, the Commission has been fortunate to have had the assistance of an Advisory Committee of experts in estate administration, constituted under the chairmanship of Malcolm Archibald, Esq., Q.C.

(ii) The Hague Convention Concerning the International Administration of the Estates of Deceased Persons

Some years ago, the Commission undertook, as a separate project, a study of the question whether the Hague Convention Concerning the International Administration of the Estates of Deceased Persons should be given effect in Ontario. As the matter of the Hague Convention is closely related to the Commission's Project on Administration of Estates of Deceased Persons, the Convention was examined as part of that project, in the context of a general consideration of the estates of foreign decedents. The International Convention will be dealt with in the Commission's final *Report on the Administration of Estates of Deceased Persons*.

(iii) Basic Principles of Land Law

Once again, other commitments, in particular the Reference on Human Artificial Insemination and Related Matters, have prevented the Commission from resuming consideration of three working papers dealing with reform of the basic principles of land law. It is hoped to return to the important issues raised by the research papers as soon as time permits.

(iv) The Law of Mortgages

The Law of Mortgages Project has been conducted in three stages. The first stage involved consultation by the Project Director, Barry J. Reiter, Esq., with representatives of various groups interested in mortgage law, with a view to identifying issues requiring remedial legislation. During the second stage, nine research papers were prepared by a Research Team and considered by members of an Advisory Committee, constituted under the chairmanship of the Project Director and consisting of representatives of the legal profession, institutional lenders, and consumer groups. At the conclusion of the second stage, the Commission gave tentative approval to a Research Report prepared by the Project Director and

indicating general policies that might be adopted to resolve the difficulties that had been identified.

During the past year, work has proceeded on the third stage of the project. Ten research papers, containing detailed recommendations elaborating and refining the general directions for reform tentatively approved by the Commission in the second stage, were prepared. These papers were discussed extensively by members of the Research Team and by the Advisory Committee, and a Director's Research Report was prepared by the Project Director. The Commission expects to consider the Director's Research Report in April of the coming year. Thereafter, preparation of the Commission's final *Report on the Law of Mortgages* and accompanying draft legislation will commence.

(v) *Time Sharing*

The past year has witnessed steady progress in the Commission's Project on Time Sharing. The objective of this project, which was added to the Commission's programme in October, 1982, is to examine all aspects of the present law governing time sharing in Ontario and other jurisdictions, with a view to determining whether there is a need in Ontario for enabling and regulatory legislation.

The first stage of the project has now been completed. During this stage, a member of the internal legal staff prepared a comprehensive working paper, which includes a discussion of the following topics: the present law in Ontario and in other jurisdictions; problem areas in the law; and alternative proposals for reform.

Work has begun on the second stage of the project. During this stage, the proposals and materials produced during the first stage will be evaluated by an Advisory Committee, which will include members of the legal profession, government officials, and other knowledgeable, interested parties. Thereafter, the working paper, together with the views of the Advisory Committee, will be placed before the Commission for consideration. It is expected that, in the coming year, the second stage of the project will be completed and that work will commence on the preparation of the draft final Report.

Another matter that raises issues similar to those that arise in the context of time sharing has recently come to the Commission's attention. Under certain long term leases — for example, leases of vacation campsites or retirement housing — the rental for the full term of the lease is paid in advance. As in the case of time sharing, this raises potential problems of developer insolvency and of management and maintenance of the facilities. Accordingly, the Commission has decided to undertake a study of long term lease developments involving prepayment of the full rental. It has not been determined, however, whether to report separately on the topic, or to deal with it as part of our *Report on Time Sharing*.

(vi) *Law of Contract Amendment*

As indicated in previous Annual Reports, this project was divided into three Phases, Phase I being concerned with issues of contract formation, and Phases II and III with substantive and remedial issues. In all, some seventeen research papers have been prepared. The last of these research papers, dealing with misrepresentation and the doctrines of mistake and frustration, were discussed by the Commission during the past year, and work on the writing of the Commission's final Report has begun. It is hoped that substantial progress can be made in the writing of the final Report during the coming year, and that the Commission can begin preparing a draft *Law of Contract Amendment Act*.

The Commission continues to be ably assisted by the joint Project Directors, Professor Jacob S. Ziegel and Professor Stephen M. Waddams, both of the Faculty of Law, University of Toronto.

(vii) *The Law of Standing*

The Law of Standing Project is concerned with the question whether private individuals, who wish to initiate litigation in the public interest, should be granted increased access to the courts. During the early stages of the project, the Commission's internal legal staff prepared a background paper setting out the present law and isolating reform issues. Subsequently, a major research paper dealing with reform of the law of standing was prepared for the Commission by an external consultant, Andrew Roman, Esq. However, due to the necessity to give priority to References from the Minister, and a decision to complete projects that predated our study of the law of standing, work on the Law of Standing Project had to be deferred.

Fortunately, the Commission was able to reactivate this important project during the past year. Under the direction of Professor W. A. Bogart of the Faculty of Law, University of Windsor, further research was commissioned dealing with the following topics: the historical role of the Attorney General in criminal matters; the impact of the *Canadian Charter of Rights and Freedoms* on the law of standing; standing rules in constitutional litigation; developments in the law of standing in the United States and civil law jurisdictions; and procedural and costs rules in public interest litigation.

This additional research is now substantially complete and, together with other research completed during the course of the project, will be considered in the near future by members of the Research Team. Thereafter, the Project Director will prepare a Research Report for consideration by the Commission.

(viii) *Contribution Among Wrongdoers*

This project is directed by Professor John M. Evans, Associate Dean of Osgoode Hall Law School, York University. The project reviews the present law governing the allocation of responsibility between two or more

persons whose conduct has caused the same loss or damage, as well as the law relating to contributory negligence.

During the course of the project, nine research papers have been prepared and considered by the Commission, dealing with the following topics: joint and several liability; joint wrongdoers and the right of contribution; elements of the right to contribution; settlements and contribution claims; defences to the right of contribution; the assessment of contribution; procedural aspects of contribution claims; and contributory negligence. At present, the Commission's draft *Report on Contribution Among Wrongdoers* is being written. It is hoped that the Commission will be able to commence consideration of the final Report, and to begin preparing draft legislation to accompany the Report, in the summer of 1984.

(ix) Remedies for Wrongful Interference with Goods

The project involves a consideration of the following topics: the specific relief remedies of replevin and detinue; damage remedies, such as trespass, conversion, and interference with a reversionary interest; and recaption of chattels.

Under the direction of the joint Project Directors, Professor George R. Stewart of the Faculty of Law, University of Windsor, and Professor Ralph L. Simmonds, Associate Dean of the Faculty of Law, McGill University, background papers were prepared by the Research Team on these and other matters. An agenda of issues, including tentative proposals for reform, was drafted by the Project Directors after discussion with the Research Team. The agenda of issues and tentative proposals were subsequently considered by an Advisory Board appointed by the Commission.

The Project Directors then prepared for the Commission's consideration a Report containing their recommendations and explanatory text. The Commission has completed its review of the Project Directors' Report and has made all necessary policy decisions. Work will now begin on the preparation of the Commission's final Report.

FUTURE PROGRAMME

The Commission will continue to accord priority to completion of the Minister's Reference on Human Artificial Insemination and Related Matters. It is also hoped to complete our very important and topical study of the law of mortgages within the coming year. In addition, many other projects are at a stage where all policy decisions have been made and only the final Report and draft legislation remain to be prepared. Clearly, these tasks will challenge and occupy us for the foreseeable future.

As projects are completed, projects that have been deferred will be reactivated, and new topics will be considered for study. As indicated, the Commission is always open to suggestions concerning areas of the law that require reform.

GENERAL ACTIVITIES

As in past years, the Commission has welcomed the opportunity to discuss with members of the legal profession the process of law reform. We value communication with members of the practising Bar, and, indeed, gladly acknowledge our indebtedness for the advice and guidance that we have received. The Chairman was, therefore, pleased to speak of the work of the Commission at meetings of the following County and District Law Associations: the Dufferin County Law Association; the Elgin Law Association; the Thunder Bay Law Association; the Kent Law Association; the Peterborough Law Association; and the Peel County Law Association. So too, the Chairman addressed a meeting of the Trustees of the Hamilton Law Association. These meetings are important to the Commission, and we wish to thank the Officers of the Associations for the arrangements that were made to ensure their success.

The Chairman and Counsel, on behalf of the Commission, attended a meeting of the Canadian Law Reform Agencies at Quebec City in August, 1983. The meeting provided an opportunity to strengthen further the firm and solid relationship that we have long enjoyed with these Agencies.

Immediately following the meeting, the Chairman and Vice Chairman, as part of the Ontario delegation, attended the Sixty-Fifth Annual Meeting of the Uniform Law Conference of Canada, which was also held at Quebec City. In our last Annual Report, we referred to the Committee on Products Liability that was established by the Uniform Law Section of the Uniform Law Conference of Canada during its Sixty-Fourth Annual Meeting. This Committee, which is co-chaired by our Chairman, has completed its task and has submitted its Report. It is expected that the Report will be considered by the Uniform Law Section during its next Annual Meeting.

During the past year, the Chairman was pleased to represent the Commission on a number of occasions. These included addresses to the Rotary Club of Midland and the Northern Institute for Public Policy and Research on the function and purpose of the Commission, and an address to the Civil Law/Common Law Exchange Programme on "The Dynamics of Law Reform", at Dalhousie Law School. The Chairman was also privileged to participate in the People's Law Conference, where he spoke on the process and policy aspects of law reform, and was a commentator at the National Conference on Legal Research and Education in Canada, "Law and Learning". It was also a pleasure for the Chairman to address the John White Society, at Osgoode Hall Law School, and to have the opportunity to speak to students at the Markham District High School and the Ryerson Polytechnical Institute.

In the past year, the Chairman, W. R. Poole, Q.C., and Counsel visited the Faculty of Law of the University of Western Ontario. During this meeting, we were pleased to discuss with both the students and the Faculty the issue of law reform and the role of the Commission. We were warmly received by the Acting Dean, Professor D. Keith McNair, the

Dean-designate, Professor Wesley B. Rayner, members of the Faculty, and the student body.

In the year under review, the Canadian Bar Association — Ontario, Real Property Section, established a Special Committee on the *Execution Act*, a member of which is the Commission's Senior Legal Research Officer, M. A. Springman, Esq. The Special Committee is investigating the relationship between the conveyancing of land and execution against land under a writ of *fiery facias*, and the Commission's 1981 *Report on the Enforcement of Judgment Debts and Related Matters*, Part III, is a major focus of the investigation.

The Commission has been honoured to receive the Chairmen of two other Law Reform Agencies: Professor Clifford H. C. Edwards, Q.C., the Chairman of the Manitoba Law Reform Commission, who is no stranger to our Commission, and the Honourable Sir Ralph Gibson, Kt., the Chairman of the English Law Commission. We have long enjoyed a warm relationship with these two sister Commissions, and the visits enabled us to discuss issues of mutual interest.

ACKNOWLEDGMENTS

Attached to this Report are two Appendices relating to the activities of the Commission. Appendix A consists of a list of Reports prepared and submitted by the Commission since its inception in 1964, together with a table indicating the extent to which legislation concerning our proposals has been enacted.

Appendix B contains a list of the officers and permanent staff of the Commission. The Commission regrets the loss during the past year of two of its legal research staff. We acknowledge with gratitude our debt to Pamela M. Gibson and Eric Gertner, Legal Research Officers, for their contribution to the work of the Commission, and we wish them every success in the future. To those who have joined us during the year, we extend a sincere welcome: Marilyn R. Leitman and Judith A. Bellis, as members of the legal research staff; and Mrs. Mary Rose Betinvieh, as a member of the administrative staff. Our sincere thanks are extended to the Administrative Officer, Miss A. F. Chute, and to the administrative staff for their support and assistance during the past year.

May we also express our gratitude and thanks to you, Mr. Attorney, and to the officers of your Ministry, for the continuing interest, assistance and cooperation that we have been afforded.

All of which is respectfully submitted.



Derek Mendes da Costa
Chairman



H. Allan Leal
Vice Chairman



Richard A. Bell
Commissioner



William R. Poole
Commissioner



Barry A. Percival
Commissioner

March 30, 1984

APPENDIX A
REPORTS OF THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Original Legislation Concerning Commission Proposals
1. Report No. 1 [The Rule Against Perpetuities]	February 1, 1965	<i>The Perpetuities Act, 1966, S.O., 1966, c. 113</i>
2. Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	March 1, 1966	<i>do.</i>
3. Report No. 2 [The Wages Act: Assignment of Wages]	March 3, 1965	<i>The Wages Amendment Act, 1968, S.O. 1968, c. 142</i>
4. Report No. 3 on Personal Property Security Legislation	May 28, 1965	<i>The Personal Property Security Act, 1967, S.O. 1967, c. 72</i>
5. Report No. 3A on Personal Property Security Legislation	May 18, 1966	<i>do.</i>
6. Report on The Evidence Act: Admissibility of Business Records	February 16, 1966	<i>The Evidence Amendment Act, 1966, S.O. 1966, c. 51, s. 1</i>
7. Report on The Mechanics' Lien Act	February 22, 1966	<i>The Mechanics' Lien Act, 1968-69, S.O. 1968-69, c. 65</i>
8. Supplementary Report on The Mechanics' Lien Act	May 26, 1967	<i>do.</i>
9. Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	See <i>The Mechanics' Lien Amendment Act, 1975, S.O. 1975, c. 43</i> <i>The Ministry of Transportation and Communications Creditors Payment Act, 1975, S.O. 1975, c. 44</i> <i>The Public Works Creditors Payment Repeal Act, 1975, S.O. 1975, c. 45</i>
10. Report on The Execution Act: Exemption of Goods from Seizure	December 9, 1966	<i>The Execution Amendment Act, 1967, S.O. 1967, c. 26</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
11. Report on The Law of Condominium	March 6, 1967	<i>The Condominium Act, 1967, S.O. 1967, c. 13</i>
12. Report on the Basis for Compensation on Expropriation	September 21, 1967	<i>The Expropriations Act, 1968-69, S.O. 1968-69, c. 36</i>
13. Report on the Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	<i>The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968, S.O. 1968, c. 120</i>
14. Annual Report 1967	January 15, 1968	Not applicable
15. Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	January 19, 1968	<i>Divorce Act, S.C. 1967-68, c. 24, s. 26</i>
16. Report on the Proposed Adoption in Ontario of The Uniform Wills Act	February 5, 1968	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40</i> See <i>The Registry Amendment Act, 1978, S.O. 1978, c. 8, s. 1</i>
17. Report on The Protection of Privacy in Ontario	September 10, 1968	See <i>The Consumer Reporting Act, 1973, S.O. 1973, c. 97</i>
18. Report on Section 183 of The Insurance Act	October 3, 1968	—
19. Report on Trade Sale of New Houses	October 4, 1968	See <i>The Ontario New Home Warranties Plan Act, 1976, S.O. 1976, c. 52</i>
20. Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	<i>The Landlord and Tenant Amendment Act, 1968-69, S.O. 1968-69, c. 58</i>
21. Report on Limitation of Actions	February 3, 1969	See <i>The Highway Traffic Amendment Act (No. 2), 1975, S.O. 1975, c. 37</i> <i>The Fatal Accidents Amendment Act, 1975, S.O. 1975, c. 38</i> <i>The Trustee Amendment Act, 1975, S.O. 1975, c. 39</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
22. Annual Report 1968	April 7, 1969	Not applicable
23. Report on the Age of Majority and Related Matters	June 3, 1969	<i>The Age of Majority and Accountability Act, 1971</i> , S.O. 1971, c. 98
24. Report on the Status of Adopted Children	June 3, 1969	<i>The Child Welfare Amendment Act, 1970</i> , S.O. 1970, c. 96, s. 23
25. Report on Family Law, Part I: Torts	November 4, 1969	<i>The Family Law Reform Act, 1978</i> , S.O. 1978, c. 2 (partial implementation)
26. Report on Section 20 of The Mortgages Act	March 12, 1970	<i>The Mortgages Amendment Act, 1970</i> , S.O. 1970, c. 54, s. 1
27. Report on Family Law, Part II: Marriage	April 6, 1970	<i>The Civil Rights Statute Law Amendment Act, 1971</i> , S.O. 1971, c. 50, s. 55 (partial implementation) <i>The Marriage Act, 1977</i> , S.O. 1977, c. 42
28. Annual Report 1969	April 20, 1970	Not applicable
29. Report on Actions Against Representatives of Deceased Persons	November 30, 1970	<i>The Trustee Amendment Act, 1971</i> , S.O. 1971, c. 32, s. 2
30. Report on the Coroner System in Ontario	January 25, 1971	<i>The Coroners Act, 1972</i> , S.O. 1972, c. 98
31. Report on Sunday Observance Legislation	February 26, 1971	<i>The Retail Business Holidays Act, 1975</i> , S.O. 1975 (2nd Session), c. 9
32. Report on Land Registration	March 23, 1971	See <i>The Corporations Tax Amendment Act (No. 2), 1979</i> , S.O. 1979, c. 89
33. Annual Report 1970	March 31, 1971	Not applicable
34. Report on The Change of Name Act	May 31, 1971	<i>The Change of Name Amendment Act, 1972</i> , S.O. 1972, c. 44
35. Report on The Mortgages Act, Section 16	June 18, 1971	—
36. Report on Development Control	September 28, 1971	<i>The Planning Amendment Act, 1973</i> , S.O. 1973, c. 168, s. 10

Title	Date of Report	Original Legislation Concerning Commission Proposals
37. Report on Powers of Attorney	January 11, 1972	<i>The Powers of Attorney Act, 1979, S.O. 1979, c. 107</i> <i>Powers of Attorney Amendment Act, 1983, S.O. 1983, c. 74</i> <i>Mental Health Amendment Act, 1983, S.O. 1983, c. 75</i>
38. Report on Occupiers' Liability	January 11, 1972	<i>The Occupiers' Liability Act, 1980, S.O. 1980, c. 14</i>
39. Report on Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
40. Report on Review of Part IV of The Landlord and Tenant Act	March 31, 1972	<i>The Landlord and Tenant Amendment Act, 1972, S.O. 1972, c. 123</i>
41. Annual Report 1971	March 31, 1972	Not applicable
42. Report on the Non-Possessory Repairman's Lien	October 4, 1972	—
43. Report on the Administration of Ontario Courts, Part I	February 26, 1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i> <i>The Judicature Amendment Act (No. 2), 1977, S.O. 1977, c. 51, s. 9</i>
44. Annual Report 1972	March 31, 1973	Not applicable
45. Report on the Administration of Ontario Courts, Part II	May 23, 1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>
46. Report on Family Law, Part III: Children	September 25, 1973	<i>The Child Welfare Amendment Act, 1975, S.O. 1975, c. 1 (partial implementation)</i> <i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<p><i>The Children's Law Reform Act, 1977, S.O. 1977, c. 41 (partial implementation)</i></p> <p>See <i>Children's Law Reform Amendment Act, 1982, S.O. 1982, c. 20</i></p>
47. Report on The Solicitors Act	September 28, 1973	—
48. Report on Motor Vehicle Accident Compensation	November 6, 1973	—
49. Report on the Administration of Ontario Courts, Part III	December 17, 1973	<p><i>The Judicature Amendment Act, 1975, S.O. 1975, c. 30 (partial implementation)</i></p> <p>See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i></p> <p><i>The Small Claims Courts Amendment Act, 1977, S.O. 1977, c. 52 (partial implementation)</i></p>
50. Report on Family Law, Part IV: Family Property Law	February 8, 1974	<p><i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i></p> <p><i>The Family Law Reform Act, 1978, S.O. 1978, c. 2 (partial implementation)</i></p> <p>See <i>The Land Titles Amendment Act, 1978, S.O. 1978, c. 7</i></p>
51. Report on Family Law, Part V: Family Courts	February 8, 1974	<p>See <i>The Unified Family Court Act, 1976, S.O. 1976, c. 85</i></p> <p><i>The Children's Probation Act, 1978, S.O. 1978, c. 41 (partial implementation)</i></p>

Title	Date of Report	Original Legislation Concerning Commission Proposals
52. Annual Report 1973	May 6, 1974	Not applicable
53. Report on the International Convention Providing a Uniform Law on the Form of the International Will	July 3, 1974	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40, s. 42</i>
54. Annual Report 1974	March 31, 1975	Not applicable
55. Report on Family Law, Part VI: Support Obligations	April 18, 1975	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i> <i>The Family Law Reform Act, 1978, S.O. 1978, c. 2</i>
56. Report on Mortmain, Charitable Uses and Religious Institutions	February 27, 1976	<i>The Religious Organizations' Lands Act, 1979, S.O. 1979, c. 45</i> <i>The Anglican Church of Canada Act, 1979, S.O. 1979, c. 46</i> <i>The Registry Amendment Act, 1979, S.O. 1979, c. 94, s. 17</i> <i>Charities Accounting Amendment Act, 1982, S.O. 1982, c. 11</i> <i>Mortmain and Charitable Uses Repeal Act, 1982, S.O. 1982, c. 12, s. 1(1)</i>
57. Report on Landlord and Tenant Law	March 15, 1976	<i>The Residential Tenancies Act, 1979, S.O. 1979, c. 78 (partial implementation)</i>
58. Report on the Law of Evidence	March 29, 1976	—
59. Annual Report 1975	March 31, 1976	Not applicable
60. Report on Changes of Name	August 16, 1976	<i>The Vital Statistics Amendment Act, 1978, S.O. 1978, c. 81, s. 1 (partial implementation)</i>
61. Report on the Impact of Divorce on Existing Wills	February 28, 1977	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40, s. 17(2)</i>
62. Annual Report 1976	March 31, 1977	Not applicable

Title	Date of Report	Original Legislation Concerning Commission Proposals
63. Annual Report 1977	March 31, 1978	Not applicable
64. Report on Sale of Goods	March 30, 1979	—
65. Annual Report 1978	March 30, 1979	Not applicable
66. Report on Products Liability	November 16, 1979	—
67. Annual Report 1979	March 31, 1980	Not applicable
68. Report on the Enforcement of Judgment Debts and Related Matters, Part I	February 20, 1981	—
69. Report on the Enforcement of Judgment Debts and Related Matters, Part II	March 31, 1981	<i>Wages Amendment Act, 1983, S.O. 1983, c. 68</i> (partial implementation)
70. Report on the Enforcement of Judgment Debts and Related Matters, Part III	March 31, 1981	—
71. Annual Report 1980-81	March 31, 1981	Not applicable
72. Report on Witnesses Before Legislative Committees	September 11, 1981	—
73. Report on Class Actions	March 31, 1982	—
74. Annual Report 1981-82	March 31, 1982	Not applicable
75. Report on the Enforcement of Judgment Debts and Related Matters, Part IV	March 31, 1983	—
76. Report on the Enforcement of Judgment Debts and Related Matters, Part V	March 31, 1983	—
77. Report on Powers of Entry	March 31, 1983	—
78. Annual Report 1982-83	March 31, 1983	Not applicable
79. Report on the Law of Trusts	March 30, 1984	—

Many of the Commission's earlier reports are no longer in print. Those that are still in print may be ordered from Publications Services, Ministry of Government Services, 5th Floor, 880 Bay Street, Toronto, Ontario, Canada M7A 1N8. Telephone 965-6015. Toll free long distance 1-800-268-7540; in area code 807, 0-Zenith 67200.

APPENDIX B

OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

Chairman	Derek Mendes da Costa, Q.C., LL.M., S.J.D., LL.D.
Vice Chairman	H. Allan Leal, O.C., Q.C., LL.M., LL.D., D.C.L.
Commissioners	Honourable Richard A. Bell, P.C., Q.C. William R. Poole, Q.C. Barry A. Percival, Q.C.
Counsel	M. Patricia Richardson, M.A., LL.B.
Secretary and Administrative Officer	Miss A. F. Chute
Senior Legal Research Officer	M. A. Springman, M.A., M.Sc., LL.B.
Legal Research Officers	Ann M. Merritt, B.A., LL.B. Larry M. Fox, LL.B. Marilyn R. Leitman, B.A., LL.M. Judith A. Bellis, B.A., LL.B.
Administrative Assistant	Mrs. B. G. Woodley
Secretary to Chairman	Mrs. Stephanie Hlynka
Secretary to Vice Chairman	Elizabeth Page
Secretary to Counsel	Mrs. D. M. Halyburton
Secretary to Administrative Officer	Mrs. Mary Rose Betinvieh, B.A.A.
Secretaries to Legal Research Officers	Mrs. Cora Calixterio Ms. V. Van Asperen, B.Sc.
Receptionist	Miss Mary M. O'Hara

TWENTIETH ANNIVERSARY REPORT

1984-85

ONTARIO LAW REFORM COMMISSION

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TWENTIETH ANNIVERSARY REPORT

1984-85

ONTARIO LAW REFORM COMMISSION



Ministry of the
Attorney
General

The Ontario Law Reform Commission was established on May 8, 1964 by section 1 of the *Ontario Law Reform Commission Act*. Section 2(1) of the Act states that it is the function of the Commission to inquire into and consider any matter relating to (a) reform of the law having regard to the statute law, the common law and judicial decisions; (b) the administration of justice; (c) judicial and quasi-judicial procedures under any Act; and (d) any subject referred to it by the Attorney General. The Commissioners are:

JAMES R. BREITHAAPT, CSTJ, CD, QC, MA, LLB,
Chairman

H. ALLAN LEAL, OC, QC, LL.M, LL.D, DCL,
Vice Chairman

HONOURABLE RICHARD A. BELL, PC, QC, LL.D

WILLIAM R. POOLE, QC

BARRY A. PERCIVAL, QC

M. Patricia Richardson, MA, LL.B, is Counsel to the Commission. The Secretary of the Commission is Diane L. Murdoch. The Commission's office is located on the Fifteenth Floor at 18 King Street East, Toronto, Ontario, Canada M5C 1C5.



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Ontario
Law Reform
Commission

To The Honourable Ian Scott, QC
Attorney General for Ontario

Dear Mr. Attorney:

We have the honour to present the Twentieth* Anniversary Report of the Ontario Law Reform Commission, for the period April 1, 1984 to March 31, 1985.

*During its first two years, the Commission did not present an Annual Report. Accordingly, the last Annual Report, for 1983-84, was the Seventeenth. Hereafter, the Commission's Annual Reports will be numbered to be consistent with making this Report the Twentieth Anniversary Report.

INTRODUCTION

This is the Annual Report of the Ontario Law Reform Commission for the period April 1, 1984 to March 31, 1985.

On May 8, 1984, the Commission marked the Twentieth Anniversary of Royal Assent to the statute establishing it. On May 24, the Honourable R. Roy McMurtry, QC, Attorney General for Ontario, hosted a dinner at the Albany Club in Toronto to mark the Anniversary and to pay tribute to Miss Aileen F. Chute, who served as Secretary of the Commission for the twenty years, and who retired from the Ontario Civil Service on May 31, 1984. The members of the Advisory Board to the Project on Human Artificial Reproduction and Related Matters were also the guests of the Attorney General, who thanked them for their assistance in the project.

The guest of honour at the Anniversary Dinner was the Honourable James C. McRuer, OC, LL.D., DCL, the first Chairman of the Commission, who is in his 95th year. Mr. McRuer was at his charming and witty best as he spoke of the history and work of the Commission.

Photographs have been included in this Report to mark the Twentieth Anniversary and to present the Chairmen, Members, and Officers of the Commission over the years. The Ontario Law Reform Commission is the oldest in the Commonwealth of Nations, and since 1964 some forty other jurisdictions have created similar research commissions to review their own legal systems.

On June 21, 1984, Dr. Derek Mendes da Costa, QC, the Chairman of the Commission since July 1, 1977, was appointed a Judge of the Unified Family Court for the Judicial District of Hamilton-Wentworth. A distinguished legal scholar and teacher, his leadership throughout the years at the Commission has been apparent in the quality of Commission Reports during his tenure. The Commission records its debt to Judge Mendes da Costa, and wishes him well in this continuance of his distinguished legal career.

On July 9, the Commission marked the Twentieth Anniversary of the appointment to the Commission of Dr. H. Allan Leal, OC, QC. Save for the four and one-half years he served as Deputy Attorney General, Dr. Leal has been with the Commission since it was established, and has been a tower of strength as Chairman for eleven years, as Vice Chairman since October 1, 1981, and as Acting Chairman on the resignation of Dr. Mendes da Costa.

On August 20, Mrs. Diane Murdoch assumed her new duties as Secretary and Administrative Officer of the Commission.

On November 1, Mr. James R. Breithaupt, QC, became the fourth Chairman of the Commission. Mr. Breithaupt had served for seventeen years in the Ontario Legislature as the MPP for Kitchener, and had been an active member of the Liberal Party Opposition, serving as Treasury

and Revenue critic, Chairman of the Public Accounts Committee, Chairman of the Select Committee on Company Law, Opposition House Leader, critic for Consumer and Commercial Relations, and latterly as the critic for the Attorney General and for Justice Policy.

On November 12, the Commission marked the Twentieth Anniversary of the appointment to the Commission of the Honourable Richard A. Bell, PC, QC, and of Mr. William R. Poole, QC.

The experience, loyalty and wisdom of Dr. Leal, the Honourable Mr. Bell, and Mr. Poole over twenty years have given the strength of continuity to the work of the Commission and have contributed greatly to its achievements.



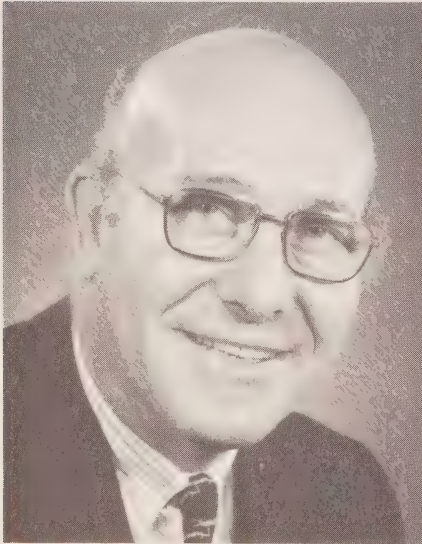
Twentieth Anniversary Dinner

May 24, 1984

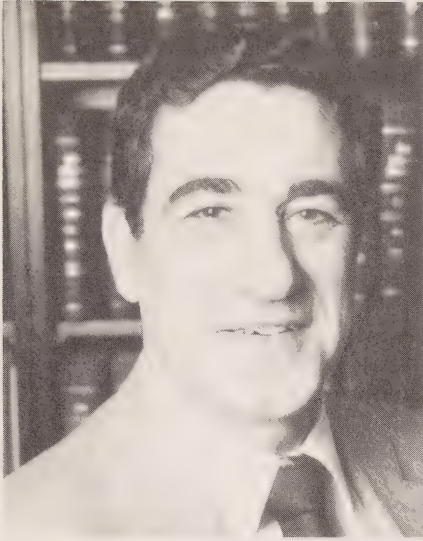
L. to R.: Hon. R. Roy McMurtry, QC, MPP, Attorney General for Ontario 1975–1985 (now High Commissioner for Canada to the United Kingdom); Hon. James C. McRuer, OC, LL.D., DCL, first Chairman; Dr. Derek Mendes da Costa, QC, SJD, LL.D., third Chairman; Mr. Arthur A. Wishart, CM, QC, Attorney General for Ontario in 1964 when the Ontario Law Reform Commission was created; Dr. H. Allan Leal, OC, QC, LL.M., LL.D., DCL, second Chairman



Hon. James C. McRuer, OC, LLD, DCL
Commissioner July 1, 1964 to June 1, 1982
First Chairman July 1, 1964 to June 30, 1966
Vice Chairman July 1, 1966 to February 8, 1977



Dr. H. Allan Leal, OC, QC, LLM, LLD, DCL
Commissioner July 9, 1964 to March 17, 1977,
and October 1, 1981 to present
Second Chairman July 1, 1966 to March 17,
1977
Vice Chairman October 1, 1981 to present
Acting Chairman June 20, 1984 to October 31,
1984



Dr. Derek Mendes da Costa, QC, SJD, LLD
Commissioner July 1, 1977 to June 20, 1984
Third Chairman July 1, 1977 to June 20, 1984



James R. Breithaupt, CSJ, CD, KCLJ, KCCM,
QC, MA, LLB
Commissioner November 1, 1984 to present
Fourth Chairman November 1, 1984 to present



1977

Front Row, L to R: Miss A. F. Chute, Dr. D. Mendes da Costa, Hon. J. C. McRuer
Second Row, L to R: Mr. W. R. Poole, Hon. R. A. Bell, Ms. M. P. Richardson, Mr. W. G. Gray,
Hon. G. A. Gale



1985

L to R: Mr. J. R. Breithaupt, Mr. W. R. Poole, Dr. H. A. Leal, Hon. R. A. Bell, Mr. B. A. Percival

THE PROGRAMME: REFERRED MATTERS

Section 2(1)(d) of the *Ontario Law Reform Commission Act* requires the Commission to inquire into and to consider any matter referred to it by the Attorney General. No new matters were referred to the Commission during 1984-85.

COMPLETED PROJECTS

Human Artificial Reproduction and Related Matters

In the past year, the Commission submitted to the Attorney General its *Report on Human Artificial Reproduction and Related Matters*. The Commission's project was commenced on November 5, 1982, when the Attorney General requested it to consider the legal issues relating to the new artificial conception technologies. Particular emphasis was placed on the welfare of artificially conceived children and, indeed, all children who might be affected by recourse to the new technologies. The Letter of Reference is reproduced in the Commission's *Sixteenth Annual Report 1982-83*, at page 8.

The Report is concerned with four basic procedures: (1) artificial insemination, which involves the intravaginal or intrauterine placement of semen by a syringe or similar means; (2) *in vitro* fertilization, popularly known as "test tube fertilization", which involves the fertilization of an ovum previously extracted from a woman, and the subsequent transfer of the fertilized ovum to a woman's uterus; (3) *in vivo* fertilization and embryo transfer, which involves the artificial insemination of a woman, removal of the fertilized ovum nonsurgically, and subsequent transfer of the fertilized ovum to another woman's uterus; and (4) "surrogate motherhood", which involves the application of one of the three technologies described above in order to produce a pregnancy in a woman who, pursuant to a prior arrangement, purports to transfer, after the birth of the child, custody of the child, as well as parental rights and responsibilities, to persons who intend to raise the child as their own.

Upon receipt of the Reference, the Commission retained Professor Bernard M. Dickens, of the Faculty of Law, University of Toronto, as Project Consultant. The Commission also placed an announcement inviting the submission of briefs in daily newspapers in Ontario and in the Ontario Reports; in addition, a copy of the announcement was circulated to a large number of persons and bodies. We then appointed an Advisory Board, comprising members of the professions of law, medicine, and social work and the disciplines of philosophy and ethics; as well, representatives of the Commission met with artificial insemination and I.V.F. specialists.

In the first substantive chapter of the Report, chapter 2, the Commission discusses the incidence and causes of infertility and the conventional

and non-conventional medical responses to it. In order to ascertain how artificial insemination specialists in this Province deal with several issues that arise in the course of their practices, a questionnaire was circulated to Ontario doctors listed in the directory of the Canadian Fertility and Andrology Society. The results of this survey are discussed in the chapter.

Chapter 3 of the Report discusses the present law in Ontario and the case for reform. It canvasses such topics as: artificial conception services as the “practice of medicine”; eligibility for participation in an artificial conception programme, including the effect of the *Canadian Charter of Rights and Freedoms* and the *Ontario Human Rights Code, 1981*; the donation of gametes (sperm and ova); sperm banks; the legal status of artificially conceived children, including birth registration; medical records; research and experimentation on human genetic material; and surrogate motherhood.

The chapter concludes that much of the present law, reflecting natural reproduction as the norm, is inadequate because it does not respond to the advent of the artificial conception technologies, or is only inadvertently relevant to the legal issues that they raise.

Chapter 4 of the Report outlines the basic alternative approaches to reform: the “private ordering” approach, where the legal regime gives effect to the parties’ intentions; and the “state regulation” approach, which we adopt generally, where the state actively intervenes to set mandatory normative standards of conduct, for example, by prohibitory legislation.

In chapter 5, the Report briefly describes reform and proposals for reform in other jurisdictions, a review conducted in more detail in the Appendix to the Report.

Chapter 6 sets forth the Commission’s recommendations for reform. The chapter is divided into four main sections, dealing with the propriety of the new technologies, general proposals for reform, proposals relating to the embryo outside the body, and surrogate motherhood.

In the first section, the Report accepts the propriety of artificial conception procedures, including the use of donated gametes, other than in the context of surrogate motherhood, which is discussed separately. However, only stable single women, and stable men and stable women in stable marital or nonmarital unions, would be entitled to participate in such procedures. For several reasons, including the potential application of the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code, 1981*, it is not proposed that the consent of the recipient woman’s husband or partner, if any, should be a statutory prerequisite to treatment of the woman, although it is envisaged that an expression of dissent on the part of the husband or partner would indicate at least some instability in the relationship.

Where donated sperm has been used in the conception, the Commission recommends that the woman's husband or partner who consents to the artificial conception procedure should be conclusively deemed to be the child's legal father for all purposes. The husband or partner's consent would be rebuttably presumed. Except in the case of surrogate motherhood, where an ovum has been donated, the woman bearing the child would be conclusively deemed to be the child's legal mother for all purposes. Where either sperm or an ovum has been donated, the gamete donor would have no legal relationship to the child arising from the fact of donation: the donor would have no parental rights or duties in respect of the child.

Accordingly, the child would acquire inheritance rights through its legal parents, unless a testator provided otherwise; it would have no inheritance rights through the gamete donor, unless the donor provided otherwise. The Commission also deals with inheritance rights where a child has been conceived posthumously with the sperm of the mother's husband or partner.

The Report next considers the selection and screening of gamete donors. As a general principle, questions of reproductive history, marital status, and genetic and other medical status are left to professional standards to be set by the medical profession. However, it is recommended that minors should be prohibited from undergoing any procedure undertaken deliberately to donate ova, although indirect donation, as a result of a hysterectomy, for example, would be permitted. Sperm donation by minors would be allowed. The Report recommends that gamete donors could be paid their reasonable expenses, based on the time and inconvenience involved, but not for any "discomfort" connected with the donation.

It is recommended that donors should be able to restrict the use to which the gamete may be put and, prior to its use in a fertilization procedure, may withdraw the donation.

The Commission recommends that commercial gamete banks should be permitted to operate, subject to licensing requirements setting standards of operation. In addition, the importation of gametes from outside Ontario is endorsed, but subject to the standards set in respect of Ontario gamete banks.

While, generally, no special rules are proposed in respect of medical records, the Report does recommend the establishment of a system of anonymous linkage between donors and recipients. Where a transmissible defect in a donor or a donor's child becomes known to a doctor, the doctor would be under a duty to make all reasonable efforts to report all relevant information to any person whose health and welfare the doctor reasonably believes might be affected by it. The identity of the parties would not, however, be disclosed.

The Report proposes quasi-criminal liability for fraudulent misrepresentation by donors and recommends that the principles of strict liability and the implied warranties of merchantable quality and fitness for purpose should not be applied to gamete donation.

In the next section of chapter 6, the Commission sets out proposals relating to the embryo outside the body. The Commission recommends that, where no donated gametes are involved, the embryo should be under the joint legal control of the intended recipient and her spouse or partner. If one should die, the embryo would be under the legal control of the survivor. If both should die or are unable to agree as to the use or disposition of the embryo, legal control would pass to the doctor or institution having actual possession of it.

However, where an embryo has been produced from donated sperm and a donated ovum, and subject to any restrictions on use imposed by the donors, legal control would reside exclusively in the doctor or institution having actual possession of the embryo. Where an embryo has been produced by a donated gamete and a gamete from one spouse or partner of the intended recipient couple, legal control would reside in that spouse or partner alone.

The Report further recommends that research and experimentation on embryos outside the body should be permitted, but should be restricted to centres approved by the Ministry of Health. To be approved, a research centre would have to establish an ethical review committee, governed by standards set by the Ministry, to screen potential research projects. An embryo subjected to non-therapeutic experimentation could not be transferred to a woman. Nor would an embryo outside the body be allowed to develop beyond fourteen days after fertilization or to be stored for more than ten years.

The final section in chapter 6 concerns surrogate motherhood. The Commission proposes that this practice should be permitted, but should be strictly regulated by legislation. The parties to a surrogate motherhood arrangement – the prospective surrogate mother and the couple who wish to raise the infant – would be required to reach a written agreement that, at a minimum, addresses certain matters specified by statute. Before the necessary artificial conception procedure could be performed lawfully, the parties would have to submit the agreement to the court and obtain approval of the arrangement. If the court was satisfied as to the suitability of the parties and the conformity of the agreement with legislative criteria, the court would be empowered to approve the arrangement. The purpose of requiring court approval of a surrogate motherhood arrangement is to protect the interests of the parties and the child.

Immediately following the birth of the child, the surrogate mother would be required to surrender custody of the child to the approved parents. Upon the birth of the child, the approved parents would be recognized by law as the legal parents of the child for all purposes, and the surrogate mother would have no legal relationship to the child.

With respect to the eligibility of the prospective parents, it is recommended that recourse to such an arrangement be dependent upon a judicial finding that there is a medical need not amenable to alleviation by other means, including the artificial conception technologies. Furthermore, the court would have to be satisfied that the child would be provided with an adequate upbringing. In making this determination, the court would be required to consider all relevant factors, including the marital status of the prospective parents, the stability of their union, and their individual stability.

In assessing the suitability of the prospective surrogate mother, the court would be required to consider, among other factors, her physical and mental health, her marital and domestic circumstances, the views of her spouse or partner, if any, and the likely effects of her participation upon existing children under her care. In addition, she must have reached the age of majority at the date of the court application.

With respect to the approval hearing, the Report discusses the standard of proof, the status of the surrogate mother as a co-applicant and whether her attendance at the hearing is necessary, the requirement that information relating to blood type, tissue, and other testing be submitted, the role of the children's aid society, and confidentiality of the proceedings and court documentation.

The Commission also considers the terms that should be included in a surrogate motherhood agreement. In the belief that it is in the best interests of the child to bond with the woman who is to raise it, the Commission recommends that a child born pursuant to an approved arrangement should be surrendered immediately upon birth to the approved social parents. In the face of a refusal to transfer the child, an order would be made that the child be delivered to the social parents. Where, however, there has been a change in circumstances, or where new information has become available, indicating that the approved parents are unsuitable to receive the child, the surrogate mother or the children's aid society would be able, at any time prior to the birth of the child, to apply for a review of the approval of the arrangement.

In recognition of the concerns expressed in connection with payments to the surrogate mother, the Commission recommends that no payment should be made in relation to an arrangement without prior judicial approval. This measure should reveal, for example, any financial exploitation of the surrogate mother.

With respect to the birth of a handicapped child, the Commission's recommendations concerning the status and parentage of a child born pursuant to an approved surrogate motherhood arrangement would effectively address legal responsibility for such a child. The Commission further proposes that the court should be required to ensure that a surrogate motherhood agreement deals adequately with the power of decision relating to the medical care of a newborn handicapped child and with the nature of that decision.

While the parties to a surrogate motherhood agreement would be free to introduce terms of their own choosing, there are certain matters to which they would be required to address their minds, although they might ultimately decide not to include them in the agreement. Among these are questions of health and life insurance protection for the prospective surrogate mother, prenatal restrictions upon the surrogate mother's activities before and after conception, and conditions under which prenatal screening of the child might be justified or required.

The balance of chapter 6 deals with certain residual matters. For example, the Commission recommends that the Ministry of Community and Social Services should be required to regulate any agencies that arrange surrogate motherhood agreements.

The Commission accepts the need for sanctions to discourage individuals from evading its proposed regulatory scheme. It recommends generally that a penalty of a fine should be provided for participation in a surrogate motherhood arrangement where it is known or believed that the arrangement is intended to evade that scheme. Where parents acquire custody of a child pursuant to an unapproved arrangement, they would be allowed, in the interests of the child, to utilize existing procedures under the *Children's Law Reform Act* and the *Child and Family Services Act* to regularize the status of the child in their family. However, they would remain subject to the proposed penalty. Where such parents seek an adoption order in relation to the child, notice of the application would be served on the children's aid society, which would be required to conduct a homestudy and submit to the court a report in relation thereto.

Finally, the Report contains a dissent by the Vice Chairman, Dr. H. Allan Leal, QC, with respect to two issues, one involving the criteria for eligibility in an artificial reproduction programme, the other involving the permissibility of surrogate motherhood arrangements.

THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

By statute, the Commission may inquire into and consider any matter relating to reform of the law.

PROJECTS IN PROCESS

1. *Administration of Estates of Deceased Persons*

As explained in previous Annual Reports, the objective of the project is a new *Administration of Estates Act*, which would bring together and revise relevant portions of the *Trustee Act*, the *Estates Administration Act*, and the provisions governing practice under the *Surrogate Courts Act* and Rules.

During the past year, work continued on the writing of the Commission's final Report and the drafting of a proposed *Administration of Estates Act*.

The Project Director is Professor George W. Alexandrowicz of the Faculty of Law, Queen's University. In the course of the Project, the Commission has benefited from the assistance of an Advisory Committee, constituted under the chairmanship of Malcolm Archibald, Esq., QC.

2. *The Hague Convention Concerning the International Administration of the Estates of Deceased Persons*

The Commission's study of the question whether the Hague Convention Concerning the International Administration of the Estates of Deceased Persons should be ratified for implementation in Ontario was originally intended to be a separate project. However, since this matter is closely related to the Commission's Project on Administration of Estates of Deceased Persons, the Convention has been examined as part of that project, in the context of a general consideration of the estates of foreign decedents.

3. *Basic Principles of Land Law*

The Commission has completed its consideration of three research papers, and has formulated its recommendations, dealing with reform of basic principles of land law. Work is now underway on the writing of the Commission's final Report on that subject.

4. *The Law of Mortgages*

The Law of Mortgages Project deals with three main topics: (1) proper disclosure to borrowers and potential borrowers; (2) the mortgage as an ongoing relationship; and (3) mortgage remedies. The project has been conducted in three stages. At the first stage, the Project Director, Barry J. Reiter, Esq., assembled a Research Team and consulted with representatives of various interest groups in the mortgages area in order to identify issues that would appear to require remedial legislation. The next stage involved the preparation of nine research papers, which were then considered by an Advisory Committee composed of representatives of the legal profession, consumer groups, and institutional lenders, under the chairmanship of the Project Director. The Commission considered and gave tentative approval to the resulting recommendations made in the Director's Report, which outlined the general policies upon which reform proposals would be based.

The final stage of the project has involved a further set of ten research papers, which elaborated upon and refined the general reform proposals of the second stage. Extensive consultation with the Research Team and the Advisory Board resulted in a Director's Report, which, together with

the second set of research reports, was given detailed consideration by the Commission in April, 1984. Since that time, a draft Act has been prepared and presented to the Advisory Board for its views. A revised version of that Act, as well as several residual issues, will be considered by the Commission in the next fiscal year. Work has already begun on the preparation of the Commission's final Report, which will include proposed legislation respecting the law of mortgages.

5. *Time Sharing*

During the past year, considerable progress was made in the Commission's Project on Time Sharing. As indicated in previous Annual Reports, the objective of this project is to examine all aspects of the present law governing time sharing in Ontario and other jurisdictions, with a view to determining whether there is a need in Ontario for enabling and regulatory legislation.

The first and second stages of this project have now been completed. During the first stage, a member of the internal legal staff prepared a comprehensive working paper, which included a discussion of the present law in Ontario and in other jurisdictions, identified problem areas in the law, and canvassed alternative proposals for reform.

During the second stage, this paper was reviewed by an Advisory Committee, which included members of the legal profession, government officials, and other knowledgeable, interested parties. Thereafter, the working paper, together with the views of the Advisory Committee, were placed before the Commission for consideration and the formulation of policy.

Work has now begun on the third and final stage of this project, during which the Commission's final *Report on Time Sharing* and accompanying draft legislation will be prepared.

The Commission has also decided to conduct a study of long term leases involving prepayment of the rent in full, a topic that raises issues similar to those that arise in the context of time sharing. The Commission has not yet determined whether to report separately on this matter or to deal with it as part of the time sharing Report.

6. *Law of Contract Amendment*

As indicated in previous Annual Reports, this project was divided into three Phases, Phase I dealing with issues of contract formation, and Phases II and III dealing with substantive and remedial issues. Seventeen research papers were prepared, all of which have been considered by the Commission. The writing of the Commission's final Report is now well underway, and it is hoped that the Report can be completed during the coming year.

The Commission continues to be ably assisted by the joint Project Directors, Professor Jacob S. Ziegel and Professor Stephen M. Waddams, both of the Faculty of Law, University of Toronto.

7. *The Law of Standing*

The Law of Standing Project is concerned with the question whether private individuals, who wish to initiate litigation in the public interest, should be granted increased access to the courts. During the initial stage of the project, the Commission's internal legal staff prepared a background paper setting out the present law and isolating reform issues. Subsequently, a research paper dealing with reform of the law of standing was prepared by an external consultant, Andrew Roman, Esq. However, because of the need to give priority to References from the Attorney General, and a decision to complete projects that predated this project, work on the law of standing had to be deferred.

In 1983, the Commission was able to reactivate the project. Under the direction of Professor W. A. Bogart of the Faculty of Law, University of Windsor, further research was commissioned dealing with the following topics: the test to be applied in respect of standing to initiate public interest litigation; the historical role of the Attorney General in criminal matters; the impact of the *Canadian Charter of Rights and Freedoms* on the law of standing; standing rules in constitutional litigation; developments in the law of standing in the United States and in civil law jurisdictions; and procedural and cost rules in public interest litigation. This additional research has now been considered by members of the Research Team.

Currently, members of the Commission's internal staff are working with the Project Director and members of the Research Team on the development of concrete reform proposals. As well, the Project Director is in the process of preparing a Research Report, with recommendations, for consideration by the Commission. It is anticipated that the Commission will consider this Research Report in the coming fall.

8. *Contribution Among Wrongdoers*

This project, directed by Professor John M. Evans, Associate Dean of Osgoode Hall Law School, York University, reviews the law governing the allocation of responsibility between two or more persons whose conduct has caused the same loss or damage; the project also canvasses the law relating to contributory negligence.

During the course of the project, nine research papers have been considered by the Commission, dealing with the following topics: joint and several liability; joint wrongdoers and the right to contribution; elements of the right to contribution; procedural aspects of contribution claims; and contributory negligence.

The Commission has received from Professor Evans a draft *Report on Contribution Among Wrongdoers*, as well as draft legislation. Work will now begin on the preparation of the final Report and the draft Bill to accompany that Report.

9. Remedies for Wrongful Interference with Goods

This project involves a consideration of the following topics: the specific relief remedies of replevin and detinue; damages remedies, such as trespass, conversion, and interference with a reversionary interest; and recaption of chattels.

After the preparation of several working papers by the Research Team, the joint Project Directors, Professor George R. Stewart of the Faculty of Law, University of Windsor, and Professor Ralph L. Simmonds, Associate Dean of the Faculty of Law, McGill University, drafted tentative proposals for reform, which were subsequently considered by an Advisory Board appointed by the Commission.

The Project Directors then prepared for the Commission's consideration a Report containing their recommendations and an explanatory text. The Commission has completed its review of the Project Directors' Report and has made its policy decisions. It is anticipated that a draft final Report, to be prepared by the Project Directors, will be submitted to the Commission in the early autumn.

10. Land Held Subject to French Title

In certain parts of Ontario, land is held subject to French title, originally granted in the eighteenth century. In such case, there is no Crown grant for the land and, in many instances, there is no official record or confirmation of the French title. As a result, conveyancing problems have arisen, including problems associated with applications for first registration under the *Land Titles Act* and applications for certification under the *Certification of Titles Act*. Even where French title has been confirmed, there is some uncertainty concerning the search period in respect of the conveyancing of *Registry Act* land. Accordingly, the Commission has initiated a project on land held subject to French title and not subject to a Crown grant.

The project is directed by R. E. Priddle, Esq., QC, former Director of the Legal and Survey Standards Branch, Ministry of Consumer and Commercial Relations.

11. Wrongful Life, Wrongful Birth and Related Actions

This project examines so-called wrongful life, wrongful birth, wrongful conception or pregnancy, and dissatisfied life actions. These actions are described in detail in the Commission's *Seventeenth Annual Report 1983-84*, at pages 8-9.

While, initially, these actions were viewed in the context of the Commission's study of the artificial conception technologies (see the Commission's *Report on Human Artificial Reproduction and Related Matters*, discussed earlier), it became apparent that the circumstances giving rise to such actions are not restricted to the use of artificial conception. Accordingly, the Commission decided to examine the law in this area in a separate project. A preliminary working paper has been prepared by one of the Commission's internal legal staff. However, because the Commission has decided to review its commitment to this project, further research on wrongful life and related actions has been deferred.

GENERAL ACTIVITIES

During the months of April, May, and June, 1984, the former Chairman, Dr. Derek Mendes da Costa, spoke to a number of organizations on the structure, function, and operation of the Commission. He addressed the Phi Delta Phi Legal Fraternity, an Education Seminar for the Judges of the Provincial Court (Civil Division), a luncheon meeting of the Real Estate department of the Blake, Cassels & Graydon law firm, and a breakfast meeting of the Beth Tzedec Synagogue Men's Club.

These opportunities to address such bodies are always welcomed, and our thanks go to those who have assisted in making the necessary arrangements for the various events.

On June 21, 1984, the former Chairman was appointed a Judge of the Unified Family Court for the Judicial District of Hamilton-Wentworth. The Vice Chairman, Dr. H. Allan Leal, served as Acting Chairman of the Commission from then to October 31, 1984.

The Vice Chairman, as Acting Chairman of the Commission, and Ms. M. Patricia Richardson, Counsel, attended the annual meeting of law reform agencies that took place at Calgary, Alberta, on August 19, 1984. Those present included members of the law reform agencies of Alberta, British Columbia, Canada, Manitoba, Ontario and Saskatchewan, along with officials from the Northwest Territories, Nova Scotia and Quebec. The meeting was especially privileged to have in attendance The Honourable Mr. Justice Michael Kirby, the Chairman of the Australian Law Reform Commission.

One noteworthy development of this meeting was that the Law Reform Commission of Canada has responded favourably to a request of the provincial law reform agencies to undertake the periodic publication of information about the work of the Canadian law reform agencies. The first issue of this publication, "Law Reform", was published in March 1985, and is perceived as fulfilling a useful function in keeping the various components of the Canadian and international law reform communities up to date with each other's activities.

As Acting Chairman, the Vice Chairman attended the annual meeting of the Uniform Law Conference of Canada during the week of August 20, 1984, at Calgary, Alberta, as a member of the Ontario delegation. The programme of the Uniform Law Conference of Canada includes projects of vital interest to law reform agencies, and law reform representatives continue to make a substantial contribution to the work of that Conference.

On May 27, 1985, the Vice Chairman, along with Professor Donovan W. M. Waters, was invited to participate in a one-day seminar in Toronto for the practising legal profession based on the Commission's *Report on the Law of Trusts* and the proposed *Trustee Act* contained in that Report. The exchange provided an interesting and useful commentary on the recommendations in the Commission's Report by a number of practitioners regarded as experts in the field of Ontario trust law.

On November 1, 1984, Mr. James R. Breithaupt became the fourth Chairman of the Ontario Law Reform Commission.

On November 15, 1984, the new Chairman attended a luncheon given by the Honourable John Turner, MPP, Speaker of the Ontario Legislature, at his chambers in the Parliament Buildings, at Queen's Park, Toronto. The Guest of Honour was the Honourable James C. McRuer, our first Chairman, who presented to the Ontario Legislature a silver tray given to him by the lawyer members of the 28th Parliament (October 17, 1967 – October 21, 1971) to mark the completion of his landmark Royal Commission Inquiry into Civil Rights. Of the twenty-six members whose signatures appear in facsimile on the tray, Mr. Breithaupt was one of a dozen who attended the luncheon and remained to watch as Mr. McRuer was introduced from the Speaker's Gallery to the members of the 32nd Parliament, from which Mr. Breithaupt had just resigned two weeks before.

On January 8, 1985, our Counsel, Ms. M. Patricia Richardson, gave birth to a baby girl. During Ms. Richardson's maternity leave, Mr. Mel A. Springman served as Acting Counsel. He also participated in a number of conferences and meetings. On April 10, 1984, he spoke at a meeting of the Canadian Bar Association – Ontario, Real Property Section, on the Commission's *Report on the Enforcement of Judgment Debts and Related Matters*, Part III (1981), dealing with execution against interests in land. He was a speaker at the May 25, 1984, Canadian Bar Association – Ontario, Continuing Legal Education Conference on Pre-Judgment Remedies, where his topic was "Conditions Applicable Upon Setting Aside Judgments". On September 28, 1984, he addressed the annual meeting of the Ontario Association of Sheriffs and Court Registrars on the changes in enforcement law arising from the *Courts of Justice Act, 1984*, and the new Rules of Civil Procedure. Finally, Mr. Springman spoke to students on law reform and the Ontario Law Reform Commission at the annual "careers day" seminars at Osgoode Hall Law School, York University (October 13, 1984), and the Faculty of Law, University of Toronto (February 15, 1985).

In the past year, Ms. Ann Merritt, one of the Commission's Legal Research Officers, participated as a panelist at the Alternate Careers Program, sponsored by the Law Society of Upper Canada, Department of Education (January 15, 1985).

Ms. Marilyn Leitman, another of the Commission's Legal Research Officers, attended, as a representative of the Commission, a Consultation on Victims of Violent Crime, sponsored by the Provincial Secretariat for Justice (May 7 and 8, 1984).

The Commission welcomed a number of visitors to Toronto during the year. Sir Gordon Borrie, Director General of Fair Trading for the British government, was followed by Mr. Christopher P. Curran, the Executive Director of the Newfoundland Law Reform Commission, and by Mrs. Margaret A. Shone, Counsel to the Institute of Law Research and Reform of Alberta.

The Honourable D. P. Makanza, Attorney General of Swaziland, and Mr. T. Masina, the Director of Public Prosecutions and Secretary to the Swazi Law Review Commission, visited with us to discuss the formation and development of their new Law Reform Commission. As the first law reform agency in the Commonwealth of Nations, we were particularly pleased to be visited by those representing the newest such organization. Discussions were held on all facets of our work, and we look forward to hearing of their success in the years to come.

Senator John F. Kelly of the Michigan State Senate and Mr. Richard D. McLellan, an Attorney-at-Law, both of Lansing, Michigan, visited the Commission to discuss with the Chairman law reform issues as well as issues relating to Michigan-Ontario cooperation.

ACKNOWLEDGMENTS

Attached to this Report are four Appendices relating to the activities and staff of the Commission. They are as follows:

- Appendix A: A list of the Reports prepared and submitted by the Commission since 1964, with a Table indicating the extent to which the proposals have been enacted by the Legislature.
- Appendix B: A list of the Commissioners and permanent staff of the Commission in the current year.
- Appendix C: A list of those who have served as Commissioners, Counsel and Secretaries from 1964 to 1984.
- Appendix D: A list of those who have served in other permanent staff appointments to the Commission from 1964 to 1984.

In the Introduction to this Report, reference was made to the retirement of Miss Aileen F. Chute, as Secretary of the Commission, on May 31, 1984. Miss Chute joined the Commission at its inception in 1964 as Secretary to the Chairman and served with the highest diligence and competence throughout the first twenty years of the Commission's life. It was at all times a privilege and pleasure to be associated with her and much of what the Commission was able to accomplish ought to be attributed to the sound and efficient administrative base that Miss Chute provided for its operation. We shall miss her and wish her well in all that lies ahead. We welcome our new Secretary and Administrative Officer, Mrs. Diane Murdoch.

During the year, Ms. Victoria Van Asperen, BSc, resigned as Secretary to the Legal Research Officers, and we thank her for her contribution to the work of the Commission. In her place we welcome Miss Sharon Nagasaka to the Commission.

The Commissioners extend their most sincere thanks to the members of the staff for the support and assistance that was so willingly and thoroughly given to each of the projects now under way.

We also express our thanks and gratitude to you, Mr. Attorney, and to your predecessors, the Honourable R. Roy McMurtry, QC, the Honourable Robert Welch, QC, and the Honourable Alan W. Pope, QC, as well as to the officers in the Ministry of the Attorney General, for the continuing interest, cooperation, and support given to us during the year.

All of which is respectfully submitted.



James R. Breithaupt
Chairman



H. Allan Leal
Vice Chairman



Richard A. Bell
Commissioner



William R. Poole
Commissioner



Barry A. Percival
Commissioner

March 31, 1985

APPENDIX A

REPORTS OF THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Original Legislation Concerning Commission Proposals
1. Report No. 1 [The Rule Against Perpetuities]	February 1, 1965	<i>The Perpetuities Act, 1966, S.O. 1966, c. 113</i>
2. Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	March 1, 1966	<i>do.</i>
3. Report No. 2 [The Wages Act: Assignment of Wages]	March 3, 1965	<i>The Wages Amendment Act, 1968, S.O. 1968, c. 142</i>
4. Report No. 3 on Personal Property Security Legislation	May 28, 1965	<i>The Personal Property Security Act, 1967, S.O. 1967, c. 72</i>
5. Report No. 3A on Personal Property Security Legislation	May 18, 1966	<i>do.</i>
6. Report on The Evidence Act: Admissibility of Business Records	February 16, 1966	<i>The Evidence Amendment Act, 1966, S.O. 1966, c. 51, s. 1</i>
7. Report on The Mechanics' Lien Act	February 22, 1966	<i>The Mechanics' Lien Act, 1968-69, S.O. 1968-69, c. 65</i>
8. Supplementary Report on The Mechanics' Lien Act	May 26, 1967	<i>do.</i>
9. Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	See <i>The Mechanics' Lien Amendment Act, 1975, S.O. 1975, c. 43</i> <i>The Ministry of Transportation and Communications Creditors Payment Act, 1975, S.O. 1975, c. 44</i> <i>The Public Works Creditors Payment Repeal Act, 1975, S.O. 1975, c. 45</i>
10. Report on The Execution Act: Exemption of Goods from Seizure	December 9, 1966	<i>The Execution Amendment Act, 1967, S.O. 1967, c. 26</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
11. Report on The Law of Condominium	March 6, 1967	<i>The Condominium Act, 1967</i> , S.O. 1967, c. 13
12. Report on the Basis for Compensation on Expropriation	September 21, 1967	<i>The Expropriations Act, 1968-69</i> , S.O. 1968-69, c. 36
13. Report on the Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	<i>The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968</i> , S.O. 1968, c. 120
14. Annual Report 1967	January 15, 1968	Not applicable
15. Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	January 19, 1968	<i>Divorce Act</i> , S.C. 1967-68, c. 24, s. 26
16. Report on the Proposed Adoption in Ontario of The Uniform Wills Act	February 5, 1968	<i>The Succession Law Reform Act, 1977</i> , S.O. 1977, c. 40 See <i>The Registry Amendment Act, 1978</i> , S.O. 1978, c. 8, s. 1
17. Report on The Protection of Privacy in Ontario	September 10, 1968	See <i>The Consumer Reporting Act, 1973</i> , S.O. 1973, c. 97
18. Report on Section 183 of The Insurance Act	October 3, 1968	—
19. Report on Trade Sale of New Houses	October 4, 1968	See <i>The Ontario New Home Warranties Plan Act, 1976</i> , S.O. 1976, c. 52
20. Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	<i>The Landlord and Tenant Amendment Act, 1968-69</i> , S.O. 1968-69, c. 58
21. Report on Limitation of Actions	February 3, 1969	See <i>The Highway Traffic Amendment Act (No. 2), 1975</i> , S.O. 1975, c. 37 <i>The Fatal Accidents Amendment Act, 1975</i> , S.O. 1975, c. 38 <i>The Trustee Amendment Act, 1975</i> , S.O. 1975, c. 39

Title	Date of Report	Original Legislation Concerning Commission Proposals
22. Second Annual Report 1968	April 7, 1969	Not applicable
23. Report on the Age of Majority and Related Matters	June 3, 1969	<i>The Age of Majority and Accountability Act, 1971</i> , S.O. 1971, c. 98
24. Report on the Status of Adopted Children	June 3, 1969	<i>The Child Welfare Amendment Act, 1970</i> , S.O. 1970, c. 96, s. 23
25. Report on Family Law, Part I: Torts	November 4, 1969	<i>The Family Law Reform Act, 1978</i> , S.O. 1978, c. 2 (partial implementation)
26. Report on Section 20 of The Mortgages Act	March 12, 1970	<i>The Mortgages Amendment Act, 1970</i> , S.O. 1970, c. 54, s. 1
27. Report on Family Law, Part II: Marriage	April 6, 1970	<i>The Civil Rights Statute Law Amendment Act, 1971</i> , S.O. 1971, c. 50, s. 55 (partial implementation) <i>The Marriage Act, 1977</i> , S.O. 1977, c. 42
28. Third Annual Report 1969	April 20, 1970	Not applicable
29. Report on Actions Against Representatives of Deceased Persons	November 30, 1970	<i>The Trustee Amendment Act, 1971</i> , S.O. 1971, c. 32, s. 2
30. Report on the Coroner System in Ontario	January 25, 1971	<i>The Coroners Act, 1972</i> , S.O. 1972, c. 98
31. Report on Sunday Observance Legislation	February 26, 1971	<i>The Retail Business Holidays Act, 1975</i> , S.O. 1975 (2nd Session), c. 9 <i>Courts of Justice Act, 1984</i> , S.O. 1984, c. 11, s. 134
32. Report on Land Registration	March 23, 1971	See <i>The Corporations Tax Amendment Act (No. 2), 1979</i> , S.O. 1979, c. 89 <i>Land Registration Reform Act, 1984</i> , S.O. 1984, c. 32
33. Fourth Annual Report 1970	March 31, 1971	Not applicable
34. Report on The Change of Name Act	May 31, 1971	<i>The Change of Name Amendment Act, 1972</i> , S.O. 1972, c. 44

Title	Date of Report	Original Legislation Concerning Commission Proposals
35. Report on The Mortgages Act, Section 16	June 18, 1971	—
36. Report on Development Control	September 28, 1971	<i>The Planning Amendment Act, 1973, S.O. 1973, c. 168, s. 10</i>
37. Report on Powers of Attorney	January 11, 1972	<i>The Powers of Attorney Act, 1979, S.O. 1979, c. 107</i> <i>Powers of Attorney Amendment Act, 1983, S.O. 1983, c. 74</i> <i>Mental Health Amendment Act, 1983, S.O. 1983, c. 75</i>
38. Report on Occupiers' Liability	January 11, 1972	<i>The Occupiers' Liability Act, 1980, S.O. 1980, c. 14</i>
39. Report on Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
40. Report on Review of Part IV of The Landlord and Tenant Act	March 31, 1972	<i>The Landlord and Tenant Amendment Act, 1972, S.O. 1972, c. 123</i>
41. Fifth Annual Report 1971	March 31, 1972	Not applicable
42. Report on the Non-Possessory Repairman's Lien	October 4, 1972	—
43. Report on the Administration of Ontario Courts, Part I	February 26, 1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i> <i>The Judicature Amendment Act (No. 2), 1977, S.O. 1977, c. 51, s. 9</i> <i>Courts of Justice Act, 1984, S.O. 1984, c. 11, ss. 19 and 25</i>
44. Sixth Annual Report 1972	March 31, 1973	Not applicable
45. Report on the Administration of Ontario Courts, Part II	May 23, 1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
46. Report on Family Law, Part III: Children	September 25, 1973	<p><i>The Child Welfare Amendment Act, 1975</i>, S.O. 1975, c. 1 (partial implementation)</p> <p><i>The Succession Law Reform Act, 1977</i>, S.O. 1977, c. 40 (partial implementation)</p> <p><i>The Children's Law Reform Act, 1977</i>, S.O. 1977, c. 41 (partial implementation)</p> <p>See <i>Children's Law Reform Amendment Act, 1982</i>, S.O. 1982, c. 20</p>
47. Report on The Solicitors Act	September 28, 1973	<p><i>Courts of Justice Act, 1984</i>, S.O. 1984, c. 11, s. 214(6)</p>
48. Report on Motor Vehicle Accident Compensation	November 6, 1973	—
49. Report on the Administration of Ontario Courts, Part III	December 17, 1973	<p><i>The Judicature Amendment Act, 1975</i>, S.O. 1975, c. 30 (partial implementation)</p> <p>See <i>The Administration of Courts Project Act, 1975</i>, S.O. 1975, c. 31</p> <p><i>The Small Claims Courts Amendment Act, 1977</i>, S.O. 1977, c. 52 (partial implementation)</p>
50. Report on Family Law, Part IV: Family Property Law	February 8, 1974	<p><i>The Succession Law Reform Act, 1977</i>, S.O. 1977, c. 40 (partial implementation)</p> <p><i>The Family Law Reform Act, 1978</i>, S.O. 1978, c. 2 (partial implementation)</p>

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<p>See <i>The Land Titles Amendment Act, 1978</i>, S.O. 1978, c. 7</p> <p><i>The Registry Amendment Act, 1978</i>, S.O. 1978, c. 8</p>
51. Report on Family Law, Part V: Family Courts	February 8, 1974	<p>See <i>The Unified Family Court Act, 1976</i>, S.O. 1976, c. 85</p> <p><i>The Children's Probation Act, 1978</i>, S.O. 1978, c. 41 (partial implementation)</p>
52. Seventh Annual Report 1973	May 6, 1974	Not applicable
53. Report on the International Convention Providing a Uniform Law on the Form of the International Will	July 3, 1974	<p><i>The Succession Law Reform Act, 1977</i>, S.O. 1977, c. 40, s. 42</p>
54. Eighth Annual Report 1974	March 31, 1975	Not applicable
55. Report on Family Law, Part VI: Support Obligations	April 18, 1975	<p><i>The Succession Law Reform Act, 1977</i>, S.O. 1977, c. 40 (partial implementation)</p> <p><i>The Family Law Reform Act, 1978</i>, S.O. 1978, c. 2</p>
56. Report on Mortmain, Charitable Uses and Religious Institutions	February 27, 1976	<p><i>The Religious Organizations' Lands Act, 1979</i>, S.O. 1979, c. 45</p> <p><i>The Anglican Church of Canada Act, 1979</i>, S.O. 1979, c. 46</p> <p><i>The Registry Amendment Act, 1979</i>, S.O. 1979, c. 94, s. 17</p> <p><i>Charities Accounting Amendment Act, 1982</i>, S.O. 1982, c. 11</p> <p><i>Mortmain and Charitable Uses Repeal Act, 1982</i>, S.O. 1982, c. 12, s. 1(1)</p>

Title	Date of Report	Original Legislation Concerning Commission Proposals
57. Report on Landlord and Tenant Law	March 15, 1976	<i>The Residential Tenancies Act, 1979</i> , S.O. 1979, c. 78 (partial implementation)
58. Report on the Law of Evidence	March 29, 1976	—
59. Ninth Annual Report 1975	March 31, 1976	Not applicable
60. Report on Changes of Name	August 16, 1976	<i>The Change of Name Amendment Act, 1978</i> , S.O. 1978, c. 28 <i>The Vital Statistics Amendment Act, 1978</i> , S.O. 1978, c. 81, s. 1 (partial implementation)
61. Report on the Impact of Divorce on Existing Wills	February 28, 1977	<i>The Succession Law Reform Act, 1977</i> , S.O. 1977, c. 40, s. 17(2)
62. Tenth Annual Report 1976	March 31, 1977	Not applicable
63. Eleventh Annual Report 1977	March 31, 1978	Not applicable
64. Report on Sale of Goods	March 30, 1979	—
65. Twelfth Annual Report 1978	March 30, 1979	Not applicable
66. Report on Products Liability	November 16, 1979	—
67. Thirteenth Annual Report 1979	March 31, 1980	Not applicable
68. Report on the Enforcement of Judgment Debts and Related Matters, Part I	February 20, 1981	—
69. Report on the Enforcement of Judgment Debts and Related Matters, Part II	March 31, 1981	<i>Wages Amendment Act, 1983</i> , S.O. 1983, c. 68 (partial implementation) <i>Proceedings Against the Crown Amendment Act, 1983</i> , S.O. 1983, c. 88 <i>Courts of Justice Act, 1984</i> , S.O. 1984, c. 11, s. 177 (partial implementation) Rules of Civil Procedure, O. Reg. 560/84, r. 60 (partial implementation)

Title	Date of Report	Original Legislation Concerning Commission Proposals
70. Report on the Enforcement of Judgment Debts and Related Matters, Part III	March 31, 1981	Rules of Civil Procedure, O. Reg. 560/84, r. 60.07(16) and (17)
71. Fourteenth Annual Report 1980-81	March 31, 1981	Not applicable
72. Report on Witnesses Before Legislative Committees	September 11, 1981	—
73. Report on Class Actions	March 31, 1982	—
74. Fifteenth Annual Report 1981-82	March 31, 1982	Not applicable
75. Report on the Enforcement of Judgment Debts and Related Matters, Part IV	March 31, 1983	—
76. Report on the Enforcement of Judgment Debts and Related Matters, Part V	March 31, 1983	—
77. Report on Powers of Entry	March 31, 1983	—
78. Sixteenth Annual Report 1982-83	March 31, 1983	Not applicable
79. Report on the Law of Trusts	March 30, 1984	—
80. Seventeenth Annual Report 1983-84	March 30, 1984	Not applicable
81. Report on Human Artificial Reproduction and Related Matters	March 15, 1985	—
82. Twentieth Anniversary Report 1984-85	September 1, 1985	Not applicable

Many of the Commission's earlier Reports are no longer in print. Those that are still in print may be ordered from Publications Service, Ministry of Government Services, 5th Floor, 880 Bay Street, Toronto, Ontario, Canada, M7A 1N8. Telephone 965-6015. Toll free long distance 1-800-268-7540; in area code 807, 0-Zenith 67200.

APPENDIX B

CURRENT OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

Chairman	James R. Breithaupt, CStJ, CD, QC, MA, LLB
Vice Chairman	H. Allan Leal, OC, QC, LLM, LLD, DCL
Commissioners	Honourable Richard A. Bell, PC, QC, LLD William R. Poole, QC Barry A. Percival, QC
Counsel	M. Patricia Richardson, MA, LLB
Secretary and Administrative Officer	Diane L. Murdoch
Senior Legal Research Officer	M. A. Springman, MA, MSc, LLB
Legal Research Officers	Ann M. Merritt, BA, LLB Larry M. Fox, LLB Marilyn R. Leitman, BA, LLM Judith A. Bellis, BA, LLB
Administrative Assistant	Beverley G. Woodley
Secretary to Chairman	Stephanie Hlynka
Secretary to Vice Chairman	Elizabeth N. Page
Secretary to Counsel	D.M. Halyburton
Secretary to Administrative Officer	Mary Rose Betinvieh, BAA
Secretaries to Legal Research Officers	Cora Calixterio Sharon Nagasaka
Receptionist	Mary M. O'Hara

APPENDIX C

OFFICERS (1964–1984) ONTARIO LAW REFORM COMMISSION

CHAIRMEN

Honourable James C. McRuer, OC, LLD, DCL	July 1, 1964 - June 30, 1966
H. Allan Leal, OC, QC, LLM, LLD, DCL	July 1, 1966 - March 17, 1977
Derek Mendes da Costa, QC, SJD, LLD (now the Honourable Judge Mendes da Costa)	July 1, 1977 - June 20, 1984
James R. Breithaupt, CStJ, CD, QC, MA, LLB	November 1, 1984 to present

VICE CHAIRMEN

Honourable James C. McRuer, OC, LLD, DCL	July 1, 1966 - February 8, 1977
Honourable George A. Gale, CC, QC, LLD	March 1, 1977 - October 1, 1981
H. Allan Leal, OC, QC, LLM, LLD, DCL	October 1, 1981 to present

COMMISSIONERS

Honourable James C. McRuer, OC, LLD, DCL	July 1, 1964 - June 1, 1982
H. Allan Leal, OC, QC, LLM LLD, DCL	July 9, 1964 - March 17, 1977 and October 1, 1981 to present
Honourable Richard A. Bell, PC, QC, LLD	November 12, 1964 to present
W. Gibson Gray, QC (now the Honourable Mr. Justice Gray)	November 12, 1964 - December 4, 1979
William R. Poole, QC	November 12, 1964 to present
Honourable George A. Gale, CC, QC, LLD	March 1, 1977 - October 1, 1981

Derek Mendes da Costa, QC,
SJD, LLD
(now the Honourable Judge Mendes
da Costa)

July 1, 1977 -
June 20, 1984

Barry A. Percival, QC

January 23, 1980
to present

James R. Breithaupt, CStJ, CD,
QC, MA, LLB

November 1, 1984
to present

COUNSEL

William B. Common, QC, LLD

November 23, 1964 -
May 31, 1967

Richard Gosse, QC, BA, LLB,
DPhil

January 1, 1968 -
December 31, 1969

Edward F. Ryan, LLM

January 1, 1970 -
April 30, 1973

Lyle S. Fairbairn, BA, LLB

November 1, 1973 -
July 30, 1976

M. Patricia Richardson, MA, LLB

December 1, 1976
to present

ADMINISTRATIVE OFFICERS and SECRETARIES OF THE COMMISSION

Aileen F. Chute

July 1, 1964 -
May 31, 1984

Diane L. Murdoch

August 20, 1984
to present

APPENDIX D

PERMANENT STAFF (1964-1984) ONTARIO LAW REFORM COMMISSION

SENIOR LEGAL RESEARCH OFFICER

M. A. Springman, MA, MSc, LLB	1980 to present
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LEGAL RESEARCH OFFICERS

Maurice J. Coombs, BSc, LLM	1965 – 1971
Maureen J. Sabia, BA, LLB	1968 – 1973
Elizabeth A. M. MacNab, LLB	1970 – 1971
Keith B. Farquhar, LLM (Hons.), LLM	1971 – 1973
John F. Layton, MA, LLB	1972 – 1973
M.A. Springman, MA, MSc, LLB	1974 – 1980
M. Patricia Richardson, MA, LLB	1974 – 1976
C.H. MacLean, BA, LLB	1974 – 1975
R. S. G. Chester, BA (Hons. Juris.)	1974 – 1977
Catherine G. Wolhowe, BA, JD	1975 – 1977
Martha Trofimenko, LLM	1977
Jennifer K. Bankier, BA, LLB	1977 – 1979
William A. Bogart, BA, LLB	1977 – 1979
M. E. B. Salter, BA, LLB	1978
Eric Gertner, LLB, BCL (Oxon)	1978 – 1983
Ann M. Merritt, BA, LLB	1979 to present
Larry M. Fox, LLB	1979 to present
Pamela M. Gibson, BA, LLB	1980 – 1983
Marilyn R. Leitman, BA, LLM	1984 to present
Judith A. Bellis, BA, LLB	1984 to present

ADMINISTRATIVE ASSISTANTS

A. E. Harrower	1974 – 1977
Roslynne F. Mains, BA	1977 – 1980
J. A. Brown, BA	1980 – 1982
Beverley G. Woodley	1982 to present

SECRETARIES TO CHAIRMEN

Aileen F. Chute	1964 – 1966
Stephanie Hlynka	1966 to present

**SECRETARIES TO
VICE CHAIRMEN**

Estella Spergel	1966 – 1968
H. Chu	1968 – 1972
A. E. Harrower	1972 – 1974
M. E. Williams	1973 – 1977
Elizabeth N. Page	1977 to present

SECRETARIES TO COUNSEL

L. G. Levack	1965 – 1967
A. E. Harrower	1967 – 1972
D. M. Halyburton	1972 to present

**SECRETARIES TO
ADMINISTRATIVE OFFICERS**

E. A. Wolaniuk	1972 – 1974
M. E. Llewellyn	1974 – 1976
Beverley G. Woodley	1976 – 1982
Mary Rose Betinvieh, BAA	1983 to present

**SECRETARIES TO LEGAL
RESEARCH OFFICERS**

K. Finnegan	1971 – 1973
P. C. Gronroos	1972 – 1973
Cynthia D. Smith	1973 – 1978
P. John	1973 – 1974
Teresa D. Loughlin	1974 – 1977
Grace C. Novakowski, BA	1977 – 1980
E. M. Renda	1978 – 1980
Toni Farrace	1980 – 1981
Victoria Van Asperen, BSc	1980 – 1984
Christine Seguin	1981 – 1982
Cora Calixterio	1982 to present
Sharon Nagasaka	1984 to present

RECEPTIONISTS

R. Wood	1968 – 1973
Beverley G. Woodley	1973 – 1976
Anne David	1976
J. A. M. O'Loughlin	1976 – 1979
Mary M. O'Hara	1979 to present

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